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A P P E A R A N C E S:

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1 MR. SCHWINDER: Good evening, and  
2 welcome to the Thursday, December 8, 2016 meeting of  
3 the Borough of Emerson Land Use Board. Before we  
4 begin with tonight's agenda, we would like to notify  
5 the public that one of the items on tonight's agenda  
6 is a public hearing. The Board will consider  
7 whether or not a certain area meets the statutory  
8 criteria under New Jersey Local Redevelopment and  
9 Housing Law to continue to be designated as a  
10 Condemnation Redevelopment Area.

11 Please be advised that due to the  
12 numerous blocks and lots that comprise the area, the  
13 Board will only be reviewing, hearing, and taking  
14 into consideration the following block and lots at  
15 tonight's meeting. Block 419, Lots 1, 2, 3, 4,  
16 6.01, 6.02, 7, 8, 9, and 10. If you are the  
17 property owner and/or person in interest affected by  
18 the potential designation of any one of these  
19 aforementioned properties, then you are invited to  
20 comment before the Board when the opportunity is  
21 provided. If you are not a property owner and/or a  
22 person of interest that may be affected by  
23 designation of a specific area being considered,  
24 then you are invited to remain for the hearing,  
25 however, please note that any information and/or

1 testimony relating to any of the other blocks and  
2 lots will not be tonight, but at a future Board  
3 meeting where notice will be provided in the same  
4 manner as required by law notifying all affected  
5 property owners and/or persons of interest, at which  
6 time the Board will consider the other properties.

7           Also the Land Use Board has been  
8 directed by the Mayor and Council to review certain  
9 additional amendments to the Borough's Redevelopment  
10 Plan. The Land Use Board has already provided its  
11 report recommending certain amendments, and will  
12 only be reviewing two additional amendments tonight.  
13 Specifically, we will consider an amendment  
14 requiring a minimum five-foot setback on the facade  
15 of fourth floor of buildings facing Kinderkermack  
16 Road, and an amendment to the parking requirement  
17 that require the Board to retain a consultant for  
18 certain applications. These are the only amendments  
19 that the Board will review tonight, as the Board has  
20 previously reviewed and recommended other amendments  
21 contained within the proposed ordinance.

22           The Board will begin hearing a  
23 presentation from Brigette Bogart, the Borough's  
24 planner, as well as any person willing to comment  
25 and aid the Board in its recommendation to the Mayor

1 and Council. Thank you for your cooperation, and we  
2 will now begin the regular agenda of tonight's  
3 meeting. And I ask anybody who has a cell phone,  
4 please silence it right now so we don't hear any  
5 phones going off during the meeting.

6 The first item on the agenda is the  
7 approval of the minutes of November 10th. Everybody  
8 should have received a copy of the minutes. At this  
9 point in time I will entertain any comments,  
10 changes, or corrections from any Board member. Do  
11 you have any comments, changes, or correction?

12 Not hearing any responses, I'd like to  
13 entertain a motion to accept the minutes as  
14 prepared.

15 (Motion made and seconded; all in favor.)

16 MR. SCHWINDER: Minutes are approved.  
17 Correspondence and vouchers?

18 BOARD SECRETARY: No correspondence;  
19 we do have vouchers.

20 (Vouchers were read, totalling \$8,360.58.)

21 MR. SCHWINDER: I will entertain a  
22 motion to approve the vouchers.)

23 (Motion made and seconded; all in favor.)

24 MR. SCHWINDER: Vouchers approved.

25 Next on the agenda is a resolution for

1 118 Eagle Drive. This is the Kim residence, and the  
2 family had applied for a rear yard setback, which we  
3 approved at the last meeting. So tonight we will be  
4 memorializing that particular approval in the form  
5 of a resolution, which everybody should have  
6 received by e-mail. If anyone has any comments,  
7 changes, or corrections, please state them now.

8 MR. MARTIN: Mr. Chairman, just for  
9 the record that includes 19.1, I believe, percent of  
10 impervious surface where 15 is the permitted. And  
11 also in the right side of the building, if you're  
12 looking directly at the front door from the street,  
13 there should be no structures in that eight-foot  
14 zone between the property line and the structure.  
15 The air conditioning units will have to go over  
16 on --

17 MR. SCHWINDER: The left side --

18 MR. MARTIN: On that side, it has to  
19 be screened and adjacent to the structure and in  
20 accordance with Mr. Ascolese's approval. That's the  
21 basis of the resolution.

22 MS. SCHWINDER: Thank you very much.

23 Any other comments?

24 MR. GOURSKY: What was determined with  
25 the front tree.

1                   MR. SCHWINDER: What was determined  
2 with the front tree is, they're going to trim the  
3 tree as best as possible as prescribed by the tree  
4 expert who also met with the Shade Tree Commission,  
5 and hopefully that tree will survive. If it doesn't  
6 survive after a number of years, the applicant is  
7 required to replace the tree with the same species,  
8 and a certain girth, which I don't recall right now.

9                   MR. MARTIN: And they have to follow  
10 the requirements of the Shade Tree Commission.

11                   MR. SCHWINDER: That's correct.

12                             Any other comments, questions?

13                             Not hearing any other questions or  
14 comments, I'd like to get a vote, a roll call vote  
15 on this resolution, please. Can I have a motion?

16                             (Motion made and seconded; all in favor.)

17                   MR. SCHWINDER: Approved.

18                             The next resolution that we have to  
19 memorialize is for 23 Pavonia Avenue, the Sabino  
20 family, and this was for a rear yard setback  
21 application so they could proceed with building a  
22 deck. You should all have received a copy of that  
23 resolution, and I'd like to entertain any questions,  
24 comments, or corrections from the Board.

25                             Not hearing any, questions, comments

1 or corrections, I'd like to entertain a motion to  
2 approve this resolution.

3 (Motion made and seconded; all in favor.)

4 MR. SCHWINDER: So that is approved.

5 Next we have an application for 437  
6 Old Hook Road, Unit 5, Club Pilates. Is that  
7 applicant here? Please step forward.

8 (A L I S O N W A R N E R, was duly sworn.)

9 MR. MARTIN: For the record -- and  
10 welcome to our normal meeting here. For the record,  
11 just state your full name and address.

12 MS. WARNER: Alison Warner, business  
13 address, 437 Old Hook Road, Unit 5.

14 MR. MARTIN: Mr. Chair, if I can lead  
15 it might be more expeditious.

16 MR. SCHWINDER: Fine.

17 BY MR. MARTIN:

18 Q. Ms. Warner, what is your type of  
19 business that you're looking to open up?

20 A. Pilates franchise, it's a studio,  
21 small fitness studio.

22 Q. And It would be in the Emerson  
23 ShopRite Shopping Center?

24 A. Correct.

25 Q. And you're here because we have to

1 approve the Club Pilates logo, correct?

2 A. Yes.

3 Q. My understanding is it's a California  
4 company and it has Pilates in numerous states across  
5 the country; is that accurate?

6 A. Correct.

7 Q. And there's probably about four in New  
8 Jersey now?

9 A. Yes.

10 Q. And, hopefully, we'll have a good  
11 Pilates in Emerson, right?

12 A. Yes, you will.

13 Q. The sign or logo, more specifically,  
14 which is why you're here, is in each of the  
15 franchises across the country?

16 A. Correct.

17 Q. And it's a standard Pilates logo, and  
18 I believe evidence has been presented to the Board  
19 as to what it looks like, and we're going to mark  
20 that as A-1 for Applicant 1, okay?

21 A. Okay.

22 (Whereupon, A-1 was marked for  
23 identification.)

24 Q. Mr. Ascolese is behind you, he's the  
25 Board engineer and the Town engineer. He gave us a

1 little synopsis of what you need to do, and,  
2 Mr. Ascolese, I'm going to just go off of that and  
3 ask her a question, okay?

4 MR. ASCOLESE: Sure.

5 Q. Mr. Ascolese would like you to confirm  
6 that you will not illuminate the sign after 11 p.m.  
7 each night, however it's lit up, you're not going to  
8 light it after that.

9 A. Okay.

10 Q. In accordance with the ordinance we  
11 commonly call Chapter 232-2 Section H of the Code.  
12 Do you agree to do that?

13 A. I agree.

14 MR. MARTIN: The maximum distance the  
15 sign can extend off the building, Mr. Ascolese, I  
16 believe is eight inches?

17 MR. ASCOLESE: Correct.

18 MR. MARTIN: I believe that the sign  
19 itself is a thickness of five inches.

20 MR. ASCOLESE: Correct.

21 Q. Do you believe that the sign itself,  
22 once mounted, will not go beyond eight inches out  
23 from the building?

24 A. I believe that's right.

25 Q. We'll just have to do that, okay?

1 A. Okay.

2 Q. I don't think there will be a problem  
3 with that. That's what you're going to have to do.

4 A. Okay.

5 Q. And then the application is required  
6 for the logo, under Chapter 232-2 Section 3, that's  
7 why you're here. And finally, the -- the sign is in  
8 conformance --

9 MR. ASCOLESE: Yes.

10 MR. MARTIN: The signage, shape and  
11 size, you know, parameters, diameter, the whole  
12 thing, is subject to 232-3, Section F. The maximum  
13 size of 24 feet, Mr. Ascolese, that's all been  
14 confirmed?

15 MR. ASCOLESE: The sign is in  
16 compliance, yes.

17 MR. MARTIN: So it comes down to the  
18 Board's feeling on the logo, I believe --

19 MR. ASCOLESE: That is correct.

20 MR. MARTIN: -- and the fact that the  
21 entire sign should not be eight inches beyond the  
22 side, correct --

23 MR. ASCOLESE: Mr. Chairman and Board  
24 attorney, this dimension of five inches, according  
25 to the code, from the building to the outside can't

1 be more than eight. So if this is five inches, the  
2 maximum distance is going to be three. All right?

3 A. Okay.

4 MR. SCHWINDER: If there is any  
5 question you can have your contractor give  
6 Mr. Ascolese a call, and he'll be happy to go over  
7 the details.

8 THE WITNESS: Thank you.

9 MS. SCHWINDER: Everybody should have  
10 received a copy of the logo and how it would look  
11 superimposed on the building. And I'd like to  
12 entertain any comments that the Board might have, or  
13 questions that you might have of the applicant.

14 MR. GOURSKY: It's illuminated behind  
15 the whole sign, all the letters also, or is it --

16 A. I believe it's front illuminated, so  
17 it's coming outward, not backward.

18 MR. SCHWINDER: Backlit.

19 MS. GOURSKY: Same with the logo, I  
20 guess, a light behind it or --

21 A. Yeah.

22 MS. GOURSKY: Okay, great. Thank you.

23 MR. KUTZIN: I guess we're approving  
24 the logo aspect of it, primarily. It looks like a  
25 flower. Is there a concept to that? What exactly

1 is it?

2 A. That's a great question. I think it  
3 is a flower. I'm not a hundred percent sure where  
4 it derived from, but...

5 MR. KUTZIN: No special meaning behind  
6 it, or anything like that?

7 A. No.

8 MR. SCHWINDER: It wasn't designed by  
9 you, it was designed by --

10 A. All by the home office.

11 MR. SCHWINDER: By the home office.

12 And how many colors? Do you know how  
13 many colors?

14 A. Just black and white.

15 MR. SCHWINDER: Black and white.

16 Any other questions or comments?

17 I'd like to entertain a motion on this  
18 particular application. Having reviewed the logo,  
19 and that's really, basically, all we have to --  
20 that's all we're charged with tonight. So I'd like  
21 to entertain a motion on this, and this application  
22 only. Motion to approve.

23 (Motion made and seconded.)

24 MR. SCHWINDER: So we have a motion on  
25 the table. We have a motion on the table, we'd like

1 to have -- I'd like to accept a motion to up to open  
2 to the public on this application, and this  
3 application only.

4 (Motion made and seconded; all in favor.)

5 MR. SCHWINDER: Okay, we're open to  
6 the public, the application for the Pilates business  
7 that plans to open at the ShopRite shopping center.  
8 Anybody have any comment?

9 Not seeing anybody standing or raising  
10 their hand, I'd like to entertain a motion to close  
11 to the public on this application.

12 (Motion made and seconded; all in favor.)

13 MR. SCHWINDER: We are closed to the  
14 public, and now we can vote on the motion before us.  
15 Roll call, please.

16 (Roll call; all in favor.)

17 MR. SCHWINDER: You are approved.

18 A. Thank you very much.

19 MR. SCHWINDER: You're very welcome.

20 At our January 5th meeting, there will be a  
21 resolution memorializing our decision. You do not  
22 have to attend that, but it wise for you at some  
23 point in time to pick up a copy of the memorialized  
24 plan -- of the memorialized resolution.

25 A. Okay. So I'm not getting that until

1 after the 5th, after January 5th?

2 MR. SCHWINDER: Right. But you can  
3 tell your contractor that you received the necessary  
4 approval so he can, basically, start acquiring the  
5 materials and getting stuff ready.

6 A. Okay.

7 MR. MARTIN: And get a card from  
8 Mr. Ascolese so the contractor can get ahold of him  
9 and maybe he can get going now, okay?

10 A. Okay.

11 MR. MARTIN: W-A-R-N-E-R, and then  
12 A-L-I-S-O-N?

13 A. Yes, correct.

14 MR. SCHWINDER: And welcome to  
15 Emerson, and good luck with your business.

16 MS. WARNER: Thank you very much.

17 \* \* \*

18 MR. SCHWINDER: We have the room until  
19 11 o'clock, at which time we have to pack up and get  
20 out so the custodians can clean up and finish their  
21 work in the building. So we will be looking to try  
22 to complete the meeting a short time before that so  
23 we're not here until 11:30.

24 The next part of the meeting is the  
25 public hearing to consider recommending to the

1 Borough Council whether or not certain blocks and  
2 lots located within the Central Business District  
3 meet the statutory criteria to be designated as a  
4 Condemnation Redevelopment Area pursuant to the New  
5 Jersey Local Redevelopment and Housing Law, and to  
6 hear all persons interested in or will be affected  
7 by the said designation.

8                   And please remember that tonight we  
9 are focusing on the 1.9 acres between Lincoln  
10 Boulevard, Kinderkamack Road, Linwood Avenue, and  
11 the railroad tracks. That's going to be the focus  
12 of our discussion tonight. And the person who will  
13 be leading that discussion is Mr. Doug Doyle of  
14 the -- he is the Borough Redevelopment attorney from  
15 the firm of DeCotiis FitzPatrick & Cole, and I would  
16 like to turn the meeting over to Mr. Doyle.

17                   MR. DOYLE: Thank you, Mr. Chairman,  
18 members of the Land Use Board, Mr. Mayor, thank you.

19                   That's correct. The only thing that  
20 we're going to be asking the Land Use Board tonight  
21 to consider is Block 419, Lots 1, 2, 3, 4, 5, 6.01,  
22 6.02, 7, 8, 9, and 10.

23                   Now, in order to deal with our COAH  
24 obligations, we noticed all of the property owners  
25 located within --

1 MR. SCHWINDER: COAH, please --

2 MR. DOYLE: COAH is the Council on  
3 Affordable Housing.

4 MR. SCHWINDER: Thank you.

5 MR. DOYLE: As some of the people in  
6 the public may know, the Governing Body is under a  
7 duty to provide affordable housing. There is a  
8 summary of what's happening, and during a break I'd  
9 invite people to come up and get a copy. In  
10 addition, the study that was performed by Bridgette  
11 Bogart is up here, and you're welcome to get a copy  
12 of that as well.

13 As I indicated, those lots in Block  
14 419 are the only properties that we're going to be  
15 discussing tonight. You may have received notice,  
16 either through publication by seeing it in the  
17 paper, or by certified mail at your home or place of  
18 business, wherever you're registered in our tax  
19 office. If you're not one of those lots and blocks,  
20 you're welcome to stay tonight and certainly listen,  
21 hear what has to be said and the continued hearings.  
22 If you do not want to stay, you will receive  
23 subsequent notice in the identical way you received  
24 notice for this evening's meeting. No action will  
25 be taken with respect to your property until you

1 receive notice once again, and you have an  
2 opportunity to appear, hear testimony, and have an  
3 opportunity to share whatever comments or objections  
4 you may have at that time.

5                   With respect to Block 419, Lots 1, 2,  
6 3, 4, 5, 6.01, 6.02, 7, 8, 9, and 10, we hope to  
7 conclude our hearing this evening. If we don't, you  
8 will not receive any further notice. So you will  
9 need to come back at the next Land Use Board  
10 meeting, the next regularly scheduled Land Use Board  
11 meeting. If you are one of those lots in that lot,  
12 you will not receive any other further notice with  
13 respect to this hearing.

14                   Now, having said that, I'd like to  
15 have your planner sworn at this time.

16                   (Whereupon, B R I G E T T E B O G A R T,  
17 was duly sworn.)

18                   MR. MARTIN: For the record, can you  
19 state your name and business address?

20                   MS. BOGART: Brigette Bogart,  
21 B-R-I-G-E-T-T-E, B-O-G-A-R-T, business address is  
22 648 Godwin Avenue, Suite 2, in Midland Park, New  
23 Jersey.

24                   MR. MARTIN: And do you want to go  
25 over some brief qualifications and --

1 MR. DOYLE: Sure.

2 EXAMINATION

3 BY MR. DOYLE:

4 Q. How long have you been a planner?

5 A. Certified planner in the State of New  
6 Jersey for 15 years.

7 MR. SCHWINDER: Can everybody hear  
8 her?

9 UNIDENTIFIED SPEAKERS: No.

10 MR. DOYLE: No problem --

11 MR. SCHWINDER: Can you bring the  
12 microphone closer? Bring it to the other side of  
13 the table.

14 A. I've been a certified planner in the  
15 State of New Jersey since 2001, so 15 years.

16 BY MR. DOYLE:

17 Q. Have you been accepted as an expert by  
18 this Land Use Board and other boards before?

19 A. Yes.

20 Q. Have you prepared redevelopment  
21 studies?

22 A. Yes.

23 Q. How many times have you done that?

24 A. At least ten this year.

25 Q. And in the past, I take it in previous

1 years you've done the same thing?

2 A. Correct.

3 MR. DOYLE: I ask that your planner be  
4 accepted as an expert in planning.

5 MR. MARTIN: Qualified as a  
6 professional planner, a certified planner in the  
7 State of New Jersey, and an expert for the purposes  
8 of this hearing. Thank you.

9 A. Thank you.

10 BY MR. DOYLE:

11 Q. Ms. Bogart, did you prepare a study  
12 with respect to the lots and blocks that I  
13 identified as Block 419, Lots 1, 2, 3, 4, 5, 6.01,  
14 6.02, 7, 8, 9, and 10?

15 A. I have.

16 MR. DOYLE: For the record, I've  
17 provided each and every one of the members of the  
18 Land Use Board a copy. I'm going to ask that this  
19 be marked as LUB, Land Use Board Exhibit 1, if  
20 that's acceptable, Mr. Martin.

21 MR. MARTIN: Yes.

22 (Whereupon, LUB-1 was marked for  
23 identification.)

24 Q. I show you what I previously marked as  
25 LUB Exhibit 1. Do you recognize that?

1 A. Yes.

2 Q. Is that the report that you prepared  
3 for the Land Use Board this evening?

4 A. Yes.

5 Q. And does that relate to Block 419,  
6 Lots 1, 2, 3, 4, 5, 6.01, 6.02, 7, 8, 9, and 10?

7 A. Yes, and it also has some additional  
8 information regarding the overall study area.

9 MR. MARTIN: And just for the record,  
10 the date is December 8, 2016.

11 A. Today's date, yes.

12 MR. DOYLE: For the record,  
13 Mr. Martin, copies of that are available for the  
14 public, and is at the front of the auditorium on  
15 what appears to be a piano bench.

16 MR. SCHWINDER: If there are not  
17 enough copies tonight is there a place where people  
18 can get a copy? Can it be posted on-line.

19 MR. DOYLE: Yeah, so what I'm  
20 suggesting is, the first thing tomorrow morning, I  
21 will work with our wonderful Land Use Board  
22 secretary and our very efficient municipal clerk to  
23 make sure that it's posted on-line and available.

24 MR. SCHWINDER: Thank you.

25 BY MR. DOYLE:

1 Q. What things did you do in preparation  
2 to prepare LUB-1?

3 A. So my first thought, from a planning  
4 prospective, is this Board and the public to  
5 understand that this exhibit, Exhibit 1 from the  
6 Land Use Board, is purely just to identify the  
7 properties in need of redevelopment. It is not to  
8 identify a redevelopment plan; it is not to suggest  
9 a redevelopment design or regulations or a vision  
10 for the Central Business District. It is purely to  
11 ensure that the Central Business District and the  
12 study area has continued to meet the need as an area  
13 in need of redevelopment.

14 With that being said, what I did was  
15 walk through the local Redevelopment Housing Law  
16 process. I reviewed the Building Department  
17 records, I reviewed tax assessment records, I did  
18 several site inspections, took photographs, reviewed  
19 tax maps, and reviewed master plan documents and  
20 zoning ordinances. All of that to ensure that we  
21 met the due diligence required by the local  
22 Redevelopment Housing Law.

23 Q. Did you personally walk these  
24 properties?

25 A. A number of times, yes.

1 Q. And did you record your observations  
2 when you did that?

3 A. Yes.

4 Q. And is that reflected in LUB-1?

5 A. Yes.

6 Q. As to each and every individual  
7 property?

8 A. Yes.

9 Q. Did you have an opportunity to either  
10 inspect them inside or at the rear of the buildings  
11 as well?

12 A. Yes.

13 Q. And how many times do you recall doing  
14 that?

15 A. At least three.

16 Q. And do you recall your most recent  
17 visit to all of these properties?

18 A. It was November 14th, November 29th,  
19 and then as recently as today, so the last three  
20 recent visits.

21 Q. As a result of your visit today, is  
22 there any changes that you would want to make to  
23 LUB-1?

24 A. No. As within the last 10 to 15  
25 years, the development and the existing building

1 conditions have remained similar.

2 Q. And they remain similar as of today?

3 A. Correct.

4 Q. Are you familiar and have you  
5 familiarized yourself with the legal standards or  
6 criteria necessary in order to declare an area in  
7 need of redevelopment?

8 A. Yes, I'm very familiar with it.

9 Q. And can you walk this Land Use Board  
10 through what those standards and criteria are under  
11 the law?

12 A. Sure. And they're delineated on page  
13 3 of the report. So if you could look at the report  
14 as I'm speaking, it may give you a little more  
15 insight into the area.

16 There are eight conditions that are  
17 set forth in the local Redevelopment Housing Law.  
18 The study area, you only meet one of those  
19 conditions, and not all of those properties has to  
20 meet those conditions, just some of them, and I'm  
21 going to get into that in a second.

22 But first I'd like to go through the  
23 eight criteria, and then just talk a little bit  
24 about the criteria that I utilized in this analysis.  
25 So they're identified A through H. The first,

1 starting with criteria A, and this is important, the  
2 generality of buildings are substandard, unsafe,  
3 unsanitary, dilapidated or obsolescent, or possess  
4 any such characteristics, that are so lacking in  
5 air, light, or space be conducive of unwholesome  
6 living or working conditions. Now, this is  
7 important because I relied on this criteria when  
8 analyzing the subject area. And when I go through  
9 the report, I'll show you lot by lot why I relied on  
10 that criteria.

11 Criteria B, I did not rely on, but it  
12 identifies the discontinuance of the use of  
13 buildings previously used for commercial  
14 manufacturing, or industrial purposes. So,  
15 basically, vacant buildings. I did not rely on that  
16 criteria going through this analysis.

17 Criteria C is land owned by a  
18 municipality, county, a local housing authority, a  
19 redevelopment agency or redevelopment entity, or  
20 unimproved vacant land that has remained so for a  
21 period of ten or more years. Now, within the study  
22 area, we do have a borough on a piece of property  
23 and we do have a borough on a right of way, however,  
24 I did not rely on Criteria C either.

25 The next two, Criteria D and E, I

1 relied in my analysis -- I wouldn't say heavily, but  
2 I think they're very important to the analysis of  
3 the area. So first, starting with Criteria D, and I  
4 utilized them together, and I'll explain that in  
5 second. But Criteria D says, areas with buildings,  
6 improvements by reason of dilapidation,  
7 obsolescence, overcrowding, faulty arrangement or  
8 design, which is important to what we're looking at  
9 tonight, lack of ventilation, light and sanitary  
10 facilities, excessive land coverage, which is also  
11 important, deleterious or use or obsolete layout,  
12 also important to the study area that we're looking  
13 at this evening, or a combination of all these  
14 factors that are detrimental to the safety, health,  
15 morals, and welfare of the community. And I think  
16 this is key to the study.

17           And as I just mentioned, there's a  
18 combination of Criteria D and Criteria E that are  
19 important to the Borough of Emerson and the study  
20 area, specifically Block 419. Criteria E says, a  
21 growing lack of proper utilization of the area, and  
22 that goes back to faulty arrangement or faulty  
23 design criteria, and it's caused by a condition of  
24 either the title, the diverse ownership of the real  
25 property or conditions therein, which impedes upon

1 the land assemblage or discourage the undertaking of  
2 improvements, resulting in a stagnant, not fully  
3 productive condition of land potentially useful or  
4 valuable for contributing or serving the public  
5 health, safety, and welfare. And the reason I say  
6 that Criteria E is very important is that when I get  
7 into the report, you'll see that there are a number  
8 of master plan documents and Borough documents from  
9 2003, the minimum, to today that say that the  
10 Central Business District should be developed with  
11 mixed use, should be -- that the heart of the  
12 downtown should have safe pedestrian ways, should be  
13 an economically viable Central Business District.  
14 And from the 2003 documents, 13 years later to  
15 today, none of that has fulfilled itself. So you'll  
16 see through the tax records analysis and the master  
17 plan analysis that Criteria E is met in a number of  
18 different lots.

19                   Criteria F and Criteria G were not  
20 utilized in this analysis, and I'm not sure it's  
21 necessary to go into it, but they're listed on page  
22 3.

23                   Criteria H is important. It talks  
24 about smart growth principles, and this is important  
25 because the study area is surrounded by and centered

1 by the Borough's train station. And while it is  
2 important to note that, yes, a number of the  
3 properties are developed, some of them have viable  
4 businesses, they are not developed in a means that  
5 are a vision of the master plan, they're not  
6 developed in a means considered by smart growth  
7 principles, and a number of them are required for  
8 the effective redevelopment of the area adjacent to  
9 the train station. So through this analysis I  
10 relied on this criteria as well.

11 So those are the eight criteria, of  
12 which I relied on for of them for this analysis.

13 Q. But did you rely on any other analysis  
14 as you were going through these properties?

15 A. Other than what I just spoke about,  
16 no.

17 Q. What about land value?

18 A. The land value analysis that I will  
19 get into in a second falls under Criteria E, which  
20 is under utilization of the lots. I also looked at  
21 police records, building maintenance records,  
22 environmental issues. With regard to DEP mapping,  
23 there are a number of sites that still have ongoing  
24 DEP monitoring. So there are a number of issues  
25 that are involved in this analysis, but that's

1 strictly going through the eight criteria.

2 Q. With respect to the eight criteria,  
3 can you explain just generally so when we look back  
4 the Land Use Board will understand what the table is  
5 that you prepared that appears on pages 6, 7, and 8  
6 of LUB-1?

7 A. Sure. So what I did was, in the first  
8 portion of the document, identify the eight  
9 criteria. And then starting on page 4, I go into a  
10 little more detail of what it requires a  
11 municipality to approve that they meet those  
12 criteria based on recent case law.

13 What Mr. Doyle just mentioned starts  
14 on page 5 and identifies what is required to meet  
15 Criteria E. And what I had mentioned previously is  
16 that it should be combined with Criteria D, talking  
17 about obsolete layout. So following page 5, I went  
18 through an analysis of the tax assessment records  
19 for all of the study area. And I had done that  
20 previous to identifying that we only want to focus  
21 on Block 419. So while all the study area is here,  
22 what I'd like to talk about first is, in general, of  
23 the 82 properties in the study area as a whole,  
24 which are identified on the map to my left --

25 MR. SCHWINDER: That goes beyond

1 the --

2 A. That goes well beyond the Block 419.

3 Q. Let's identify that as LUB-2.

4 (Whereupon, LUB-2 was marked for  
5 identification.)

6 A. And that map is in the report.

7 Q. Can you just indicate what page of the  
8 report it's in, please?

9 A. Page 10.

10 MR. DOYLE: I dated it 12/8/16,  
11 Mr. Martin.

12 MR. MARTIN: Thank you.

13 A. So as I started to mention, a lot of  
14 the background information I started to gather  
15 before I thought it was appropriate to pull out  
16 block by block and section by section of this  
17 analysis. So for the next analysis with regard to  
18 the tax assessment records, I did for the entire  
19 study area, which I would repeat for every hearing  
20 that we have on any sections.

21 But as I mentioned, there are 82  
22 properties in the overall study area. Only ten of  
23 those properties have a ratio of land value to  
24 improvement value of two to one or greater. And the  
25 reason that's important is because there's plenty of

1 standards that suggest that if you have something  
2 less, then the property may be under utilized.

3 MR. SCHWINDER: Could you just explain  
4 the ratio so everybody understands what you're  
5 talking about? Please.

6 A. Sure. So if your land value, in  
7 simple terms, is \$100,000, and your improvements are  
8 \$200,000, that's a two to one ratio. If you have  
9 something less than that, so your improvements were  
10 less than two to one, it is an indicator that you're  
11 improperly or under utilizing your property. And I  
12 say it's an indicator because there's other factors  
13 involved. And there's other factors such as site  
14 design, site layout, building conditions, and  
15 whatnot. And that's why I had previously said that  
16 Criteria D in the Local Redevelopment Housing Law  
17 should be combined with criteria E. You have to  
18 look at the site layout, the building conditions and  
19 how that works, and why the site may be under  
20 utilized. So you combine that with analysis of the  
21 tax records.

22 So as I indicated, the overall study  
23 area, only ten properties meet that ratio or see  
24 that ratio. So it's only twelve percent of 34 acres  
25 of the entire municipality. If you're specifically

1 looking at Block 419, of the 11 lots only one of  
2 them meets that criteria at a 2.48 ratio, and that's  
3 Lot 4. The remainder of lots --

4 MR. SCHWINDER: Can you identify that  
5 lot?

6 A. Lot 4 is the corner lot.

7 MR. SCHWINDER: Do you know what  
8 business is on that lot?

9 A. It's the restaurant, Rancho Cantina.  
10 Do you want to mark this?

11 Q. Yes, I'm going to mark this as LUB-2A.  
12 (Whereupon, LUB-2A was marked for  
13 identification.)

14 MR. MARTIN: Just for the record, just  
15 identify that.

16 MR. DOYLE: Yes. I'm dating it  
17 12/8/16.

18 Q. Would you indicate what LUB-2A is,  
19 please?

20 A. Yes, it's a focus map of the study  
21 area identifying the block and lots, and then on the  
22 right-hand side of the exhibit is the study area  
23 outlined in red overlaid on the existing zoning map.  
24 And the reason I bring this up is because what I  
25 want to do is, actually, go to the next page which

1 is a focus of Block 419.

2 Q. We're going to indicate that as  
3 LUB-2B?

4 (Whereupon, LUB-2B was marked for  
5 identification.)

6 Q. And would you indicate what LUB-2B is?

7 A. Sure. So on the right-hand side of  
8 the exhibit is the entire study area, and as I had  
9 mentioned previously, what we decided to do after  
10 looking at all the analysis and the planning issues  
11 with regard to the study area is divided up, and we  
12 took Block 419, Section A, and that's identified in  
13 blue on the left, and then we divided the remainder  
14 of the study area, different sections, based upon  
15 access issues, location issues, existing uses and  
16 whatnot, so that's on the left-hand side.

17 On the right-hand side is what we're  
18 focusing on tonight, Block 419. It has the aerial  
19 view taken from Bing maps. Block 419 as well as the  
20 GIS map, and it will show you that -- what I just  
21 mentioned, Lot 4 is Rancho Cantina on the corner  
22 of Lincoln and Kinderkamack Road, and that is the  
23 only lot that exceeds the tax assessment ratio of  
24 two to one.

25 Q. In addition to the under utilization

1 analysis that you performed, did you also  
2 consider --

3 A. One other thing I did want to mention  
4 about the ratio analysis is, has shown that just to  
5 do the analysis of improved value to land value is  
6 not enough. You have to look at it compared to the  
7 rest of the municipality. If those ratios are  
8 similar throughout the municipality, it doesn't mean  
9 anything. So what I did was look at other  
10 commercial areas and all other commercial properties  
11 within the municipality and through the same  
12 analysis. So all other commercial properties that  
13 are not in the study area, their ratio is 2.1 to  
14 one. So they are similar or exceed the two to one  
15 ratio. So there is something going on within the  
16 study area that is not necessarily characteristic of  
17 other commercial properties within the municipality.

18 Q. In addition to the analysis with  
19 respect to potential under utilization, did you also  
20 consider other analyses, like police records?

21 A. As I started to mention, I looked at  
22 the police records, and I looked at them for all of  
23 Kinderkamack Road, and this was done prior to  
24 pulling out Block 419. But if you look at the  
25 entire study area, which is 34 acres of land in a

1 municipality that is about 1,535 acres, that  
2 translates into 2.2 percent of your land area is  
3 within our study area. Of that 2.2 percent, it  
4 equates to 32 percent of all police calls. Now,  
5 granted, it's noteworthy that, yes, it's a highly  
6 travelled commercial area in town, I expect the  
7 police calls to be slightly higher in this area than  
8 elsewhere in town. But 32 percent of the police  
9 calls for the -- as opposed to the rest of  
10 municipality seems slightly high. And the least  
11 noteworthy, as this Board reviewed, the analysis for  
12 redevelopment -- and that's located on page 12.  
13 What I did was, I summarized the actual the police  
14 calls, but the actual police reports are in the  
15 appendix of this document.

16 MR. GOURSKY: And how many years --

17 A. The last five years.

18 Q. Did you also consider the master plan?

19 A. Yes, and I think -- as I started to  
20 mention to you, obviously, from a planning  
21 prospective, I think this is the one of the most  
22 important things in this document, is the master  
23 plan for numerous years, over a decade or so,  
24 starting in 1999, have identified a need to upgrade  
25 the area, and this is all detailed on page 13. It

1 1999 it says that there's need for a downtown plan  
2 to address areas adjacent to the railroad station,  
3 and it goes on to say that the Borough should  
4 consider use of the Local Redevelopment Housing Law  
5 to create a redevelopment plan, and it has a number  
6 of goals. From that, it appears that the Borough in  
7 2002 created a CBD plan.

8 MR. SCHWINDER: CBD meaning Central  
9 Business District?

10 A. Central Business District. And I  
11 think that's noteworthy because any time you look up  
12 Emerson, Google Maps, it used to be Yahoo Maps, Bing  
13 Maps, you type in Emerson, it pulls you to Block  
14 419. That's the central area of your downtown.  
15 That's your Central Business District.

16 So in 2003, the Central Business  
17 District plan was created and had a number of goals.  
18 It said, create a comprehensive and coordinated long  
19 range plan. Create -- something that would create a  
20 continuous frontage of buildings, encourage lot  
21 consolidation, reduce setback lines, enhance  
22 opportunities for in fill and redevelopment where  
23 appropriate, support modest increase and intensity  
24 of use, identify regulations that would encourage  
25 rehab. And that was 13 years ago. And it also

1 talks about road improvements, facade improvements,  
2 and whatnot. From that, a year later the Borough  
3 decided to do a redevelopment designation in 2004,  
4 which was the first redevelopment designation, and  
5 in 2006 created a redevelopment plan.

6 So all that being said, nothing  
7 happened. We had two lots of the entire area  
8 redeveloped. In 2007 --

9 MR. SCHWINDER: What you're saying is,  
10 we gave individual land owners the opportunity to  
11 redevelop their property or get together with  
12 neighboring land owners and possibly create  
13 something better than what was there already.

14 A. Not at first. At first we required  
15 the lot consolidation. But you're correct, in 2008  
16 when we looked at this, we said, if an individual  
17 property owner can redevelop their own property  
18 based upon these enhanced standards, increase  
19 density, if you can meet all these criteria, you're  
20 more than welcome to do that. One property owner  
21 did that.

22 Q. Since 2008?

23 A. Yes. Actually since 2003 -- so in  
24 2007, the examination report repeated the goals of  
25 the Central Business District. And the reason I'm

1 emphasizing this is, I think it's very important  
2 that this Board has continually over the decade  
3 said, these are the goals. This is what we want to  
4 happen, and nothing has happened. In 2007, goal  
5 number one was to uphold the comprehensive long  
6 range plan for the Central Business District, to  
7 improve the buildings' storefronts, to create active  
8 storefronts. Goal two was to encourage the  
9 coordination of building renovations construction of  
10 new building. Goal three was to seek a unified  
11 design character through a system of street scape  
12 improvements. Goal four, to improve, increase  
13 pedestrian safety, and enhance aesthetics. Goal  
14 five, again, enhance aesthetic by encouraging  
15 general maintenance of all buildings. These goals  
16 still hold true today. And again, it goes on to  
17 page 14. And this is over a decade of planning  
18 documents, and we've only had one property redevelop  
19 in accordance with the plan, and then one  
20 individual property owner actually develop his  
21 property solely.

22 So those are pages 13 and 14 of the  
23 document. And then I get into the zoning ordinance,  
24 which, basically, just describes the fact that we  
25 relaxed over zoning criteria, we relaxed the

1 permitted uses, we have permitted more uses, we  
2 reduced the setback to try to encourage further and  
3 further development, and nothing has happened.

4 Q. Now, did you go through a property by  
5 property, lot by lot analysis?

6 A. Yes.

7 Q. And does that begin, I guess, on page  
8 18 of the study?

9 A. Yes.

10 Q. I'd like to direct your attention to  
11 page 19 where I believe you did an analysis of Block  
12 419, Lot 1; is that correct?

13 A. Yes. And if I may, I want to pull up  
14 another exhibit.

15 Q. Great.

16 MR. DOYLE: I'm going to mark this --  
17 Mr. Martin, are we at 3?

18 MR. MARTIN: Yes.

19 MR. DOYLE: LUB-3, 12/8/16.

20 (Whereupon, LUB-3 was marked for  
21 identification.)

22 BY MR. DOYLE:

23 Q. Ms. Bogart, would you explain what  
24 LUB-3 is?

25 A. All those photographs and maps were

1 taken from the report itself or photographs that I  
2 took on the site inspection of November 14. The  
3 next three exhibits you'll see are all the details  
4 and photographs of the lots on Block 419. The first  
5 exhibit you'll see here, are Lots 1, 2, and Lots 3  
6 and 4.

7 Q. And would you please explain to the  
8 Board what your observations were with respect to  
9 Block 419, Lot 1.

10 A. Just for the Board's and public's  
11 edification, the way this works is, you're going to  
12 start at 11 o'clock and go clockwise around Block  
13 419. So Lot 1 is located on Lincoln Boulevard.  
14 It's the northwestern most lot adjacent to Kenneth  
15 Avenue. This lot is currently occupied by a  
16 two-story residence. You'll see in the photographs  
17 on the exhibit, which I have all the way to the left  
18 as well as in the report on page 20, the structure  
19 is in dire need of rehabilitation or renovations,  
20 identifies that it is substandard and unsafe. There  
21 are holes, not only located within the siding, but  
22 also in the roof itself. The roof is caving in.  
23 The roof along the porch area is concave, as well as  
24 the -- the roof flooring itself. There is no  
25 parking on-site, and there's very little room for

1 storage. And you can see that there's deteriorating  
2 windows as well as gutters that are exhibiting water  
3 damage, the gutters are falling down. So from all  
4 of that, and you can see the photographs yourself, I  
5 thought that it was important to note all this, and  
6 the structure is in a state of disrepair, and that  
7 it falls under Criteria A.

8                   Not only that, I believe that Lot 1  
9 qualifies for faulty arrangement under Criteria D.  
10 The only resident located on the block is adjacent  
11 to the railroad. There's no parking on the site. A  
12 couple of times I've been there, there have been  
13 trucks parked within the small grass area, which may  
14 not be in and of itself inappropriate, however it's  
15 located immediately adjacent to Kenneth Avenue,  
16 which is a busy area commuter area, so to have  
17 trucks pull off a grass area may be inappropriate  
18 and may impact negatively the surrounding area. The  
19 facts that there is no on-site parking and it  
20 appears to be more than a two-family, also impacts  
21 the area because there's only two-hour parking on  
22 Lincoln Avenue as it is. In addition, I think that  
23 this lots means Criteria E, talking about under  
24 utilization. So that Criteria E goes in concert  
25 with Criteria D. This property has land to

1 improvement ratio .86. As I mentioned to you, 2.0  
2 is the standard. So I think this property in and of  
3 itself exhibits characteristics that meets Criteria  
4 A, D, and E, and this can be confirmed through site  
5 inspection and the photographs that are identified  
6 on page 20 of the report and the exhibit to my left.

7 MR. SCHWINDER: My observation of that  
8 particular property, there's a vehicle that parks on  
9 the grass next to Kenneth Avenue. There is a  
10 fenced-in area behind the house, which a car could  
11 certainly park, however, it is occupied by a flatbed  
12 trailer.

13 A. And other materials, which I'm not  
14 sure what they are.

15 MR. DOYLE: Mr. Chairman, I truly  
16 appreciate that comment, and I know Mr. Martin with  
17 counsel you, but nothing prevents this Lands Use  
18 Board from making its own personal observations.  
19 While Brigette and I are professionals and we prayer  
20 these reports and we give you advise, most of us  
21 don't live in your community. We, actually, happen  
22 to live in the same community several towns away. I  
23 would urge you to rely on your own observations  
24 since 2004, and as we go through this hearing  
25 process, I think it's important that you make those

1 observations, and when you vote on whether you  
2 believe this meets the criteria, I'm going to ask  
3 all the Land Use Board members to share whatever  
4 personal observations they believe are in forming  
5 their decision. And I know, Mr. Martin, you can  
6 advise them appropriately at that time, so I really  
7 appreciate that. And I would ask that all of the  
8 Land Use Board members, if a decision is made  
9 tonight that you would understand that, perhaps,  
10 between now and the time we return, you can make  
11 your own observations. You can walk the site. So,  
12 thank you, Chairman.

13 BY MR. DOYLE:

14 Q. You also indicated in your report  
15 that, notwithstanding the fact that you believe in  
16 your professional opinion that it meets Criteria A,  
17 D, and E, that it also may be necessary for the  
18 effective development of the redevelopment area in  
19 its entirety. Can you explain a little bit about  
20 what that means?

21 A. Sure. What I think is important to  
22 Lot 1 in this location is that we have a Borough  
23 right of way, Kenneth Avenue, that could access or  
24 potentially access a redevelopment plan for the  
25 public. It can access public parking, it could

1 access parking for property located at Kinderkamack  
2 Road. The fact that you have a lot immediately  
3 adjacent to Kenneth that is under utilized and  
4 deteriorating is important to note, because I think  
5 that lot could be important to the access issues and  
6 the redevelopment issues of the overall plan for  
7 Block 419.

8 Q. Thank you. I'd like to turn your  
9 attention now to page 21, and specifically Block  
10 419, Lot 2. Did you similarly, as you indicated,  
11 make an inspection of that property?

12 A. Yes, I did.

13 Q. Can you walk the Board through that  
14 inspection? And I'm assuming they should also make  
15 reference to LUB-3.

16 A. Yes. So Lot 2, the photographs and  
17 the aerial and the tax records are on page 21 and 22  
18 of the report, and also a portion of them are  
19 located in the central portion of the exhibit to my  
20 left. This lot, obviously, is, as the Board is  
21 aware and I'm sure some of the public is aware, was  
22 previously occupied by a one-story residence, also  
23 without parking and was dilapidated. It was  
24 previously, in 2011, had a number of building  
25 maintenance violations, and has since been torn

1 down. And I believe it has been purchased by the  
2 owners of Lots 3 and 4 for parking.

3 Lot 22 exhibits the existing  
4 conditions. You'll see, basically, an empty lot,  
5 not improved, there's no parking lot, it's a gravel,  
6 dirt, a little bit of hay. It looks like dumpster  
7 area that's halfway enclosed, I believe, for the  
8 adjacent restaurant, and clearly under utilized.  
9 It's been vacant now for a number of years. The  
10 improvement value is .045, again, where the standard  
11 is 2.0. Obviously, again, significantly  
12 underutilized, particularly with regard to the fact  
13 that it is in the heart of the Central Business  
14 District, and in the heart of your planning goals  
15 and vision goals for the last 12 years.

16 Q. You said that it may be used for  
17 parking. In your research did you reveal that it  
18 became the subject of a site plan that permits  
19 parking there?

20 A. I have not seen that, but there are a  
21 number of tire tracks that illustrate that people  
22 have been parking there.

23 Q. Right. But there's nothing on file  
24 that suggests that this received site plan approval  
25 to have parking, correct?

1 A. Not that I've seen.

2 Q. And in this area is parking a  
3 principally permitted use?

4 A. No.

5 Q. And is there any striping in this  
6 area?

7 A. No.

8 Q. So in conclusion, you believe that  
9 this meets Criteria E, correct?

10 A. Yes, and that, obviously, can be  
11 confirmed through the site inspections, the  
12 photographs above, and, obviously, the Board can  
13 provide their own input as to what they've seen, but  
14 I believe that it meets the criteria not only for  
15 the underutilization, but it's also, I believe,  
16 stagnant at this point, because it's been a number  
17 of years where it sat like this. And you have to  
18 take that into consideration with other land use and  
19 planning goals for this area as a whole, the Central  
20 Business District, which I just went through.

21 MR. SCHWINDER: Prior to that becoming  
22 an empty lot, it was a dilapidated house and used  
23 many years to store goods from the adjacent  
24 restaurant. So it wasn't utilized as a residence,  
25 so that particular piece of property has been under

1 utilized for at least 15 years.

2 Q. In addition, it's your opinion that  
3 this property may also be necessary for the  
4 effective development of the entire area. Can you  
5 give us your impression as to why it's a good  
6 property based on its location or other factors --

7 MR. MARTIN: Mr. Doyle, all opinions  
8 are to a reasonable degree of certainty in the field  
9 of --

10 MR. DOYLE: Professional planning,  
11 thank you.

12 MR. MARTIN: -- for the rest of the  
13 hearing?

14 MR. DOYLE: Yes. Thank you.

15 A. I'm not trying to testify as anything  
16 else other than planner.

17 MR. MARTIN: So a reasonable degree of  
18 certainty in the area of professional planning.

19 A. The same comments I made with regard  
20 to Lot 1 pertain to Lot 2, immediately adjacent to  
21 the right of way of Kenneth Avenue. And you'll  
22 notice if you look at the tax maps, both Lot 1 and  
23 Lot 2 line up directly to Lot 7 which is also owned  
24 by the Borough. What's important to note for this  
25 whole area, Lot 7 is owned by the Borough, commuter

1 parking lot, Ambulance Corps building, which I'll  
2 get into in a second, but without that lot and these  
3 two lots, it's very difficult to redevelop the block  
4 as a whole. So the lots located in front of  
5 Kinderkamack Road are only approximately a hundred  
6 feet deep. So if you try to put a substantial  
7 building there and add parking and landscaping and  
8 sidewalk improvements requested by the Borough, it's  
9 very difficult to do it within a hundred foot depth.  
10 So not only is the Borough property needed to do  
11 that, but also these two adjacent properties of  
12 Lots 1, 2, and three.

13 BY MR. DOYLE:

14 Q. I'd like to now direct your attention  
15 to Block 419, Lots 3 and 4. I trust you conducted a  
16 similar analysis?

17 A. Yes.

18 Q. And can you walk through the analysis  
19 you performed for the Land Use Board? Beginning on  
20 page 23.

21 A. Yes, on the right of the exhibit to my  
22 the left. This is the restaurant and the one  
23 property that actually meets the ration of more than  
24 two to one. You'll see that lot three is utilized  
25 for parking. The lot itself has been subject to a

1 number of violations dating back at least to 2006,  
2 Health Department issues, illegal parking, selling  
3 of vehicles, signage, lighting issues, littering,  
4 weeds -- in 2010 it was boarded up property.  
5 Obviously, it's been purchased and redeveloped since  
6 then, however, the site still, unfortunately, has  
7 issues with regard to site layout. There's no  
8 landscaping on site, there's no pedestrian walkways.  
9 It's a hundred percent impervious coverage. And  
10 even given the fact that it's a hundred percent  
11 impervious coverage, it only has approximately 46  
12 parking spaces. And the reason I note that is  
13 because it severely under parked. Your ordinance  
14 requires one parking space for every three feet. So  
15 if you translate 46 parking spaces for every three  
16 feet, you can have a restaurant that's 138 seats.  
17 The existing restaurant is well upward of 220 or 230  
18 seats. So it's significantly deficient at least by  
19 30 or 40 spaces on site.

20                   And the reason I raise this is, while  
21 a majority of time the site is empty. During  
22 breakfast and lunch, there's very little parking  
23 there. But there are some times where parking is  
24 needed on the site, and this translates to impact of  
25 the surrounding area. People need to find a place

1 to park elsewhere. So that is the negative impact  
2 on the surrounding area. As well as the fact that  
3 it is an empty parking lot in the middle of your  
4 downtown 90 percent of the time, that also has a  
5 negative impact on your Central Business District.  
6 SO while it is a viable use and important to have a  
7 restaurant there, wonderful that it's been  
8 redeveloped as a building, unfortunately, the way  
9 the site was laid out, it seems to not be working  
10 with your redevelopment goals and plans and your  
11 existing zoning ordinance.

12 Q. What does the existing ordinance call  
13 for on this particular lot?

14 A. Mixed use, three to four stories.

15 Q. And what does mixed use mean?

16 A. It would be commercial below and  
17 residential above. So a greater utilization of the  
18 property, obviously providing it with adjacent  
19 properties, providing it with if appropriate  
20 parking, but, again, while the Borough would like to  
21 encourage restaurants, it's important that the  
22 building has been redeveloped, it does not -- it  
23 doesn't seem to fit in with the zoning ordinance and  
24 the plans itself.

25 Q. And for this reason you believe it

1 meets Criteria D?

2 A. Yes.

3 Q. You also indicated it could  
4 potentially be necessary for the effective  
5 development of the area?

6 A. Yes.

7 Q. And could you indicate why, please?

8 A. Sure.

9 Q. Within a reasonable degree of planning  
10 certainty.

11 A. With regard to Block 419, there are  
12 two corner properties that are very important to the  
13 redevelopment. The first corner property is to the  
14 south, immediately adjacent to the train station.  
15 And as you're coming into the town and you're  
16 crossing over the railroad tracks, that's the one  
17 property you're going to see that is going to have a  
18 major impact.

19 The other property you're going to see  
20 on Block 419 is this site. When you're coming from  
21 south down Kinderkamack Road, this is the point of  
22 property that's going to have a visual impact and a  
23 planning impact on the Kinderkermack Road  
24 Redevelopment Project. So from that prospective,  
25 these two corner properties, I believe, are very

1 important for a very effective redevelopment plan,  
2 particularly given the fact that if you look at the  
3 way and compare it to the way the existing  
4 development is set up. The last thing you want to  
5 do is go through a redevelopment project and have  
6 the corner property, the most visual piece of the  
7 redevelopment project, be a service parking lot  
8 that's empty 90 percent of the time. So from a  
9 planning perspective, I think this is important to  
10 provide for effective redevelopment of this area.

11 Q. I'd like to now direct your attention  
12 to Block 419, Lot 5. Did you have an opportunity to  
13 perform an analysis of Block 419, Lot 5?

14 A. I did.

15 MR. DOYLE: I'm going to mark a new  
16 exhibit, and that's going to be LUB-4, 12/8/16.

17 (Whereupon, LUB-4 was marked for  
18 identification.)

19 A. It's Lot 5 and 6.01 and 6.02.

20 Q. Can you please explain to the Board  
21 what observations you made of Block 419, Lot 5?

22 A. Sure. As this Board is, I'm sure,  
23 aware, and the public is aware, this site was  
24 previously an abandoned one-story structure in  
25 severely deteriorated condition. It had

1     contaminations on site.  It is still an active NJMES  
2     site, it's with the DEP is 452277.  It has  
3     groundwater contamination that's being monitored.  
4     The reports and maps from the New Jersey DEP is  
5     located in the appendix of the document.  Previous  
6     to it being redeveloped, there were numerous  
7     violations that are all detailed with regard to  
8     maintenance issues.  All of that has subsequently  
9     been taken care of.  The individual property owner,  
10    and this is the one property that I had mentioned  
11    previously that's been redeveloped, the property  
12    owner took advantage of the codes that we wrote to  
13    ensure or try to encourage redevelopment, and then  
14    subsequently redeveloped the property.  The building  
15    itself is consistent with redevelopment plan.  The  
16    one concern from a planning perspective here is that  
17    in order to properly connect this property with the  
18    adjacent lots it is necessary for redevelopment or  
19    to include in the redevelopment plan some way to  
20    coordinate and encourage combined circulation.  One  
21    of the things that is --

22                   MR. SCHWINDER:  Combined vehicular  
23    circulation.

24           A.     Yes, and, actually, pedestrian as  
25    well.  One of the benefits to redevelopment is that

1 you can coordinate the design from site to site, and  
2 you can't do that on an individual basis. And  
3 obviously, you see that here, that individual came  
4 in for site plan approval, and he came by himself.  
5 What is great from a redevelopment perspective is  
6 that you can coordinate parking, vehicle  
7 circulation, pedestrian circulation, and an  
8 encourage cross access so that it works more  
9 efficiently not only for this site, but also for the  
10 area. So while the site itself has been  
11 redeveloped, I think that it meets -- it's necessary  
12 for the effective redevelopment of the area just  
13 from a circulation perspective at a minimum.

14 Q. When you say it's necessary, where the  
15 building sits may not be necessary, but the lot, the  
16 parking lot may be necessary or is necessary for the  
17 effective development of the entire area?

18 A. I believe it is.

19 Q. Directing your attention to Block 419,  
20 Lot 6.01, I'm assuming that that also is referenced  
21 in LUB-4?

22 MR. SCHWINDER: May I just go back to  
23 that one redeveloped property? There are how many  
24 apartments in that property?

25 A. Three -- I was up there twice -- I

1 think it was three.

2 MR. SCHWINDER: Three apartments that  
3 were rented well before he building was finished.

4 A. Yes.

5 MAYOR LAMATINA: Two.

6 MR. SCHWINDER: Two apartments. So  
7 they were rented prior to completion.

8 A. Yes.

9 MR. SCHWINDER: So it was desirable  
10 for people to be in that area.

11 MR. DOYLE: So I think your point, Mr.  
12 Chairman, is well taken. The mixed use goals are  
13 immediately fulfilling themselves as soon as we  
14 built it. And if you adopt, you build it and they  
15 will come, as soon as it was -- to your point,  
16 before it was finished, with a mixed use building,  
17 which our planner has recommended for years now, it  
18 immediately got occupied. And by the way, just for  
19 the record, we were talking about Block 419, Lot 5.  
20 BY MR. DOYLE:

21 Q. Turning our attention to Block 419,  
22 Lot 6.01, similarly that can be found on LUB-4, can  
23 you please explain to the Board what your  
24 observations were about Lot 6.01?

25 A. So the pictures and narrative on page

1 27 to 29 of the report, obviously everyone is aware  
2 that this is the one-story structure with the liquor  
3 store and the cleaners. The site is not undersized  
4 for the zone, however, the existing building is so  
5 substantial that it creates an issue with regard to  
6 parking on site, circulation on site, and it appears  
7 to create a need for outdoor storage. You'll see  
8 from the pictures, you have --

9 Q. Page 28?

10 A. Page 28, a number of items that could  
11 be stored inside but are on the exterior, creating  
12 further issues for circulation and parking. There's  
13 a Budweiser trailer or cooler that been there, I  
14 think, on every site inspection that I've taken, and  
15 it was still there this evening. You have a number  
16 pallets that I believe are recycling material but  
17 are standing out in the parking area, a cooler, ice  
18 machine, and whatnot, that are located on the  
19 exterior of the building which is also substantial,  
20 creating further impediment to circulation.

21 Q. Can you indicate where the rear of  
22 this building faces?

23 A. The rear of the building faces the  
24 railroad tracks.

25 Q. So anybody pulling into town or taking

1 public transportation looking out their window  
2 passing through Emerson would see this?

3 A. Right. So on page 28, all except for  
4 the photograph on the upper left-hand side, is all  
5 the rear of the building.

6 Q. And did you make a final determination  
7 as to whether this meets the criteria in the  
8 redevelopment law?

9 A. Sure. Before I do that, what I do  
10 want to note is that there have been environmental  
11 issues on the site. It's still an active NJMES site  
12 identified as 12270. Again, the report and map is  
13 in the back. It has been subject to past code  
14 violations for property maintenance, and identified  
15 on page 27.

16 Here, the other thing important to  
17 note is that pulling into the site from  
18 Kinderkermack Road, you basically have 33 feet from,  
19 I would say, curb line, but asphalt line to the  
20 front of the building where you pull in. That gives  
21 you 13 feet to pull out, and then you're backing  
22 into where pedestrians would walk with undefined  
23 sidewalk. And I say that from a planning  
24 perspective, that it's important to realize, because  
25 pedestrians can be walking on an asphalt area and a

1 car pulling out in that same exact area, and all  
2 your master plan documents have identified that this  
3 area is unsafe for pedestrians, and it's a goal to  
4 improve pedestrian safety. And this is one of the  
5 sites where pedestrian safety could be an issue  
6 based upon the dimensions of that front parking  
7 area.

8                   So based on all those facts, I believe  
9 that it meets Criteria D and E, both obsolete  
10 layout, because of the size of the building, it's  
11 partially layout, and E because of under  
12 utilization. The site land to improvement value is  
13 1.23, again, versus 2.0 is the standard. And as I  
14 mentioned to you previously, the commercial  
15 properties outside the study area has a ratio of  
16 2.11.

17                   So I concluded from a planning  
18 perspective that the area, this lot in particular,  
19 is not developing in a manner that furthers the  
20 goals of the master plan, and it's not consistent  
21 wit the goals of the Central Business District plan,  
22 particular because it's very close to the train  
23 station. This should be your smart growth area.  
24 This should be the areas being developed with mixed  
25 use and more intense development of affordable

1 housing, more in line with your master plan goals,  
2 and that's not what's happening here.

3 Q. When you talk about pedestrian safety,  
4 are you also talking about what's referred to as  
5 walkable downtowns?

6 A. Yes.

7 Q. And in your in opinion as a planner,  
8 does this site plan encourage or discourage a  
9 walkable downtown area ?

10 A. It's clearly discourages it, and  
11 that's clearly noted in a number of the master plan  
12 documents. You have vehicles that have to pull out  
13 back into where pedestrians would possibly walk in  
14 an area where there's no defined curb cut, I think  
15 it's -- what's approximately 55 to 56, 57 feet wide  
16 without a curb cut. So a pedestrian to walk by and  
17 figure out where it's safe to walk is a little  
18 discouraging, to say the least.

19 Q. You also indicated that you believe  
20 that this property is also necessary for the  
21 effective redevelopment of the entire area. Can you  
22 show the Board why you believe this property is also  
23 important to the effective redevelopment of the  
24 area?

25 A. Sure. As I started to mention, given

1 its proximity to the train station, I think, and the  
2 master plan goals and the CBD goals, the fact that  
3 this is developed, a one-story building that doesn't  
4 have appropriate parking seems to be completely  
5 opposite of what the Borough has been trying to  
6 achieve for the last 10 to 15 years.

7                   MAYOR LAMATINA: I have a question.  
8 Paragraph one on page 29, the last sentence, the  
9 lack of a curb cut is a typical -- is that a typo?

10           A.       Yes, that's supposed to be is not  
11 typical.

12           Q.       Turning your attention to page 30,  
13 Block 419, Lot 6.02, can that also be found on  
14 LUB-4?

15           A.       Yes, it's the column all the way to  
16 the right.

17           Q.       And what is lot 6.02, and what did you  
18 observe, please?

19           A.       So the structure on 6.02 is a mixed  
20 use structure. From what I found there are five  
21 residential units above, or within the structure as  
22 a whole, and then there's a small retail component  
23 which is currently vacant --

24                   MR. SCHWINDER: Occupied as of today.

25           A.       Okay. As of yesterday.

1 Q. When you say occupied as of today --

2 MR. SCHWINDER: There is a business in  
3 there operating. So lights were on, people were  
4 inside, something to do with eyebrows and threading,  
5 or something like that.

6 A. So page 31 provides the photographs --  
7 similar photographs that are on the exhibit. It's a  
8 two-story structure, ground floor commercial, five  
9 residential units above, on site parking. It  
10 appears that there's eight parking spaces for the  
11 retail and the five residential units, so it's  
12 slightly under parked. I don't think that appears  
13 to be such an issue, but the parking lot itself is  
14 an issue. It's half gravel, half dirt -- excuse me,  
15 half dirt, half asphalt, you'll see weeds growing  
16 through the asphalt, there's a light pole in the  
17 middle of the lot impeding circulation. There's a  
18 guardrail that is falling down, a deteriorating  
19 facade that has holes in the siding, as seen in the  
20 photographs. There's boarded up windows, they're  
21 all covered, including the front windows,  
22 there's deteriorating paint, and, basically, the  
23 facade itself has been falling apart. So you'll see  
24 in the photographs all boarded up windows and the  
25 paint that is falling down. And while in and of

1     itself it may not be an issue, but that does not  
2     seem to be the stricture that you want to mimic the  
3     goals or promote the goals of your Central Business  
4     District in your redevelopment plan.

5                     So I would -- as the Board, as you're  
6     reviewing this report and analyses, I would look at  
7     the pictures very carefully, and look at the goals  
8     that are identified in your master plan and make  
9     sure that's what you don't want to see here. From a  
10    planning perspective, I'm pretty sure that's not  
11    what is consistent with the master plan goals.

12                    Q.     And again, is this property  
13    particularly well positioned such that it would be  
14    necessary for the effective development of the  
15    Central Business District in this area?

16                    A.     Yes. This property is three lots away  
17    from the train station. It is immediately adjacent  
18    to where the train stops. It is, basically, a part  
19    of the Central Business District, and that's why I  
20    mentioned the Central Business District goals. I  
21    believe this meets Criteria D for deterioration  
22    based upon all the issues I mentioned previously,  
23    also Criteria E, underutilization. It has the land  
24    to improvement value of .78, and, again, 2.0 is the  
25    standard. And based upon the goals of this

1 municipality, I don't believe that this is the most  
2 proper utilization of this lot, so...

3 Q. Did you mean Criteria A and Criteria  
4 E?

5 A. Yes.

6 Q. I'd like to direct your attention now  
7 to Block 419, Lot 7. This is Borough owned. We  
8 didn't put this on the board. We're assuming the  
9 Land Use Board is likely familiar with this.

10 MR. MARTIN: For the record, it's page  
11 32, if anyone has it.

12 Q. Thank you. Can you explain what your  
13 observations were with respect to Block 419, Lot 7?

14 A. Sure. What I actually did do -- and  
15 let me go through the observations first.

16 Q. Sure.

17 A. So this site is occupied by the  
18 volunteer Ambulance Corps, and the commuter parking  
19 area. It has a land to improvement ratio of .27,  
20 clearly under utilizing service parking, and I  
21 believe it meets Criteria E.

22 This property itself is substantially  
23 necessary for the effective redevelopment of the  
24 area. And I want to -- I printed out an aerial from  
25 Google maps.

1 Q. This is going to be LUB-5, 12/8/16.

2 (Whereupon, LUB-5 was marked for  
3 identification.)

4 Q. Should we turn it?

5 A. I'll do this for you, and then for  
6 them. So to the left of the exhibit is Kenneth  
7 Avenue Avenue, straight along the western side of  
8 the redevelopment area or Block 419. This area in  
9 the middle is Lot 7. This is the Ambulance Corps  
10 building, and this is the commuter parking area. So  
11 the Borough owns this strip here and this portion in  
12 the center. The lots that front on Kinderkamack  
13 Road, this area, are approximately a hundred feet  
14 wide. And as I started to mention earlier, in order  
15 to develop them with the sidewalk, the improvements,  
16 the dining that is envisioned by the Central  
17 Business District plan, and provide for the parking,  
18 there's no way that could happen from in a lot depth  
19 of a hundred feet, from here back. So in order to  
20 accomplish the commuter parking, the shared parking,  
21 the wider sidewalk, the landscaping, all the goals  
22 envisioned in the master plan and the CBD plan, you  
23 need this lot. Without this lot and the Borough  
24 right of way, it will never happen. So this lot,  
25 Lots 1, 2, and 3 are extremely necessary for the

1 effective redevelopment of this area. Without this  
2 section, it can never happen, because the design  
3 doesn't work. So from those perspectives, not only  
4 under utilized, but they are necessary for the  
5 effective redevelopment of the area.

6 MR. DOYLE: Could you just, basically,  
7 point out what you were identifying?

8 A. As I mentioned, this is Kenneth Avenue  
9 which is the public right of way. Lot 7 which is  
10 owned by the Borough is here. It's the big chunk in  
11 the middle. It's occupied by the Ambulance Corps  
12 and the commuter parking area. The lots that front  
13 of Kinderkamack Road basically run this way. And  
14 they're generally a hundred feet in depth. So as I  
15 just started to mention, in order to accommodate all  
16 of the improvements that the master plan documents  
17 are looking for, that could never happen within a  
18 hundred feet in depth.

19 So this area, Lot 7 that's owned by  
20 the Borough, Kenneth Avenue, Lots 1, 2, and 3, are  
21 really necessary in order to see any improvements  
22 that can happen on Kinderkamack Road. So what I'm  
23 saying is, Lot 7, which is Borough owned, not only  
24 is it under utilized, but it's necessary for the  
25 effective redevelopment of the area as a whole.

1 MR. DOYLE: Mr. Chairman, we have  
2 three more lots to go through. Would you like us to  
3 continue going through --

4 MR. SCHWINDER: Yes, please.

5 MR. DOYLE: At this time we're going  
6 to turn to page 34 of LUB-1, and I'm going to mark  
7 the board that has just been put up by our planner  
8 as LUB-6. Do I have that right, Mr. Martin?

9 MR. MARTIN: Yes.

10 (Whereupon, LUB-6 was marked for  
11 identification.)

12 BY MR. DOYLE:

13 Q. Directing your attention to page 34 of  
14 the report, and specifically Lot 8, did you do  
15 similarly do an inspection and make observations of  
16 this block and lot?

17 A. Yes.

18 Q. Could you walk through those  
19 observations with the Board, please?

20 A. Sure. So the last board includes Lots  
21 8, 9, and 10 which are the three lots that are in  
22 the corner, the southern most corner of Block 419,  
23 and immediately adjacent to the train station.  
24 There are a very similar because they have very  
25 little parking up front. The majority of what

1 happens on-site appears to happen to the rear. The  
2 front of the building appears to be in okay  
3 condition or appropriate condition, and seems to be  
4 maintained. It appears from site inspections that  
5 it's a different story when you look to the rear of  
6 the lot. Starting with Lot 8, it's a one-story  
7 multi-tenant commercial building. Up front there  
8 is, again, no curb cut, very uncontrolled, and we go  
9 back to pedestrian safety. There were a number of  
10 violations from 2007 to 2015 that are all noted on  
11 page 34. No environmental issues on Lot 8. If you  
12 look at page 35 are the photographs for the rear of  
13 the property. And again, you'll see outdoor  
14 storage, a number of benches, ad hoc sheds, I guess  
15 storage sheds that have been added on to the  
16 building, storage containers with plywood that are  
17 toward the rear of the property. You'll see on the  
18 left-hand side of page 35 there's a storage shed  
19 that is falling down, and behind that is a truck.  
20 Between the storage shed and the property line is  
21 approximately 27 feet. That drive aisle between the  
22 truck and the shed itself is approximately 12 feet.  
23 The reason I note that is because it's the only way  
24 to get in and out to access the rear of Lots 9 and  
25 10 and a portion of Lot 8. So if you go back there

1 with a car and all those parking spaces are full,  
2 the only thing you can do is back out of that area,  
3 and that's because that's the way the lot is set up  
4 and designed. You'll see a number of the walls are  
5 crumbling, and I'm not sure the pictures do it  
6 justice, but there's holes in the concrete wall and  
7 cement block, there's holes in the plywood and a  
8 number of the temporary storage structures.

9 MR. SCHWINDER: Ms. Bogart, this  
10 building has how many retail store fronts?

11 A. Three.

12 MR. SCHWINDER: How many parking  
13 spaces?

14 A. That's difficult to say.

15 MR. SCHWINDER: Two, three?

16 A. There are probable four up front.

17 MR. SCHWINDER: Four parking spaces.

18 And people who go to these businesses, they pull  
19 their car in forward, and then they're obligated.

20 To back out onto Kinderkamack Road;  
21 is that correct?

22 A. Yes.

23 MR. SCHWINDER: And if they do back  
24 out, they're backing out to a blind sided area,  
25 because the building next door, basically, gets

1 pretty close to the curb. So you're take your life  
2 in your hands as you're backing up with traffic  
3 traveling south on Kinderkamack Road? Correct me if  
4 I'm wrong.

5 A. That's right. There's actually two  
6 separate circulation issues with regard to this  
7 site. One up front as you described, and then one  
8 in the rear as I tried to describe, which I assume  
9 employees park in the rear. But they're doubling up  
10 and trying to back out. It's difficult to get in  
11 and out.

12 Q. Is the rear striped at all, or is  
13 there any specific parking area, or is it make shift  
14 parking --

15 A. It appears to be make shift.

16 MR. SCHWINDER: I would say, given  
17 testimony to the ability of a business to thrive,  
18 there has been a Chinese take-out restaurant that's  
19 run out of that site for quite some time, and it  
20 seems to be quite a viable business despite all of  
21 these problems. And what I'm trying to say is, that  
22 our downtown has opportunity for growth and to  
23 attract people to a business year after year after  
24 year after year if it's the right business.

25 A. Take out would potentially do very

1 well. There's no on-site parking needed. It's just  
2 the drivers going in and out, which I could see in  
3 this situation.

4                   Unfortunately, you'll see in some of  
5 the photographs on this site, there's coolers up  
6 there which appears to indicate that the buildings  
7 themselves are not large enough to accommodate all  
8 the necessary equipment for restaurants themselves,  
9 and that's more evidence in Lot 9.

10           Q.       With respect to Lot 8, would you just  
11 briefly confirm what the criteria are --

12           A.       Sure. I believe that Lot 8 meets  
13 Criteria A. The building is dilapidated. It's  
14 evidenced by crumbling concrete. There's holes in  
15 the walls, there's damage to the gutters, there's  
16 plywood that's, basically, so watered through that  
17 it's coming off the building. It appears that the  
18 building really hasn't been properly maintained,  
19 particularly in the rear. The front seems to be  
20 okay.

21                   Additionally, in the rear there's the  
22 parking area, the sidewalks in the front have not  
23 been maintained. They have a negative impact to the  
24 public. So I think that Criteria A has been met. I  
25 believe that Criteria D has also been met for all of

1 the reasons that you have discussed, Mr. Chairman,  
2 and I've discussed those faulty arrangements,  
3 undefined curb cuts, undefined circulation areas and  
4 parking areas, improper drive aisles, which all have  
5 a negative impact not only to the public, to the  
6 pedestrian safety, but also to the adjacent property  
7 owners. To try to back out a car to adjacent lots  
8 is not fair to adjacent property owners. So I think  
9 Criteria D is met.

10                   Again, I think also Criteria E is met.  
11 And as I mentioned in the very beginning, Criteria E  
12 and D are very closely related. And you'll see that  
13 for most of these properties, they're very similar.  
14 The issues that -- the faulty arrangement and faulty  
15 design go to the part of why the sites are under  
16 utilized. In this case, the land to improvement  
17 value ratio is 1.5, which is higher than the other  
18 ones but not at that 2.0 standard.

19                   MR. SCHWINDER: In my comments I was  
20 talking about when someone is backing out vehicle to  
21 vehicle, the possibility of collision, not even  
22 thinking at that moment of people walking along  
23 Kinderkamack Road, and the driver not being able to  
24 see them because they would be hidden by that brick  
25 building next door, so that is a severe safety

1 hazard for pedestrians.

2 A. I agree. And overall, obviously, the  
3 site is not -- the area is not developed in a manner  
4 that is consistent with the land use goals, which  
5 is, again, why I went through painstaking detail of  
6 the master plan goals and CBD goals in the last ten  
7 years.

8 So Lot 8 exhibits the conditions, I  
9 believe, that meet Criteria A, D, and E, and I  
10 believe it's been confirmed through the site  
11 inspection and photographs and the notes, and,  
12 hopefully, through your own inspections and notes.

13 BY MR. DOYLE:

14 Q. You also said something that I think  
15 is important for the Board to focus on, that the --

16 MR. SCHWINDER: Speak up.

17 Q. I'm sorry -- that the buildings, as a  
18 result of their deterioration, create a negative  
19 impact on the area. Can you expound on that a  
20 little bit, how that creates a negative impact in  
21 your experience as a planner?

22 A. I think it goes with anything, even  
23 with a residential single-family home, if your  
24 neighbor is improving their property or keeping  
25 their property up, you want to do the same. If your

1 neighbor is not doing that, you really don't care  
2 what your property looks like. So it has a negative  
3 impact. The theory of fixing broken windows, you  
4 fix a broken window on one property, the next  
5 property wants to include the broken window. And  
6 that's --

7 Q. An accepted planning criteria?

8 A. Yes.

9 Q. Directing your attention now to page  
10 37, Block 419, Lot 9.

11 A. Sure. We're down to two more.

12 Q. And similar to be found on LUB-6.

13 A. It's in the middle of the exhibit  
14 board.

15 Q. And you've made observations of this  
16 as well?

17 A. So this is a one-story multi-tenant  
18 commercial building. Again, like all of Block 419,  
19 excessive coverage, on-site parking, wide curb cuts,  
20 stacked parking. This site has had environmental  
21 issues and is still an active site, NJMES site  
22 12778 with ground water termination. Again, the  
23 reports and maps are in the appendix. It had  
24 repeated violations, the Building Department and  
25 property maintenance that are identified on page 37.

1           Q.       You took the photos as well that we  
2 find on page 38?

3           A.       Yes. This site seems to have creeping  
4 effect as far growing additions. If you look at  
5 aerials through -- the last couple of years, first  
6 you'll see, if you look on page 38, the addition in  
7 the brown next to the coolers, that was there  
8 several years ago, and then all of a sudden the  
9 adjacent addition, the plywood, showed up a couple  
10 years ago. So the photograph all the way to the  
11 upper left was taken from the rear of the property.  
12 The photograph to the bottom right was taken,  
13 basically, looking from the train station forward.  
14 This was, again, another site that has a restaurant  
15 in it, a number of coolers. And if you look into  
16 the temporary structure that was created, there's  
17 coolers and the restaurant storage materials that  
18 are there. Obviously, the site may be too small for  
19 what is being conducted there, the business that's  
20 being conducted there. Maybe the building needs to  
21 be slightly larger, however, there's very little  
22 parking on site.

23                       From the front you'll see the  
24 photograph to the left, the bottom, the site does  
25 not look -- it looks maintained. But when you look

1 to the rear, there seems to be other issues going  
2 on. As I mentioned to you, the site seems to be  
3 undersized for the business that was taking place  
4 there.

5                   MAYOR LAMATINA: Do you know if  
6 permits were obtained for those additions to that?

7           A.       I don't.

8                   MAYOR LAMATINA: Do you know if this  
9 Board granted any permission on variances or any  
10 kind of approval for those conditions?

11                   MR. SCHWINDER: As far as I know, no.

12           Q.       And this specific criteria that you  
13 believe this site meets under the Local Housing and  
14 Redevelopment law?

15           A.       I believe it meets Criteria A, which  
16 is deterioration. If you go out there and actually  
17 inspect, I don't think the photographs do it  
18 justice. But those additions are crumbling,  
19 they're clearly not up to code, they are water  
20 damaged and falling apart, there's holes in the wall  
21 that you can see. Even though the front facade has  
22 been patched, you'll see that there are issues with  
23 the structure itself. And obviously, you'll see  
24 from the photographs and site inspections, that the  
25 property has not been maintained up to standards.

1                   Also, the parking area itself has not  
2 been maintained. The sidewalk and all the public  
3 viewing areas adjacent to the train station in the  
4 heart of the downtown has not been maintained. I  
5 have photographs of a white pole that's, basically,  
6 half out of the ground that's been sitting there for  
7 years. It's rusted. So from those perspectives, I  
8 believe that the site meets Criteria A. It also  
9 meets Criteria D for improper layout, undefined curb  
10 cuts, not enough parking. You'll see -- and I don't  
11 even know if they have access from the rear, Lot 8,  
12 but there's really not enough parking on the site  
13 for what the current use is. I believe Criteria D  
14 is met.

15                   Also, I believe Criteria E is met.  
16 This site has a land to improvement value of .48,  
17 again, an indicator of under utilization. So I  
18 believe that under utilization, improper land use,  
19 deteriorated building, all gives this Board the  
20 right to recommend that this site in this area is  
21 blighted in accordance with the Local Redevelopment  
22 Housing Law.

23                   Q.       How about the location of this  
24 property with respect to being necessary for  
25 redevelopment in the area?

1           A.       Well, this is one of the key  
2 properties. As I mentioned previously, Block 419  
3 has two key corner properties. This is the key  
4 corner. It is immediately adjacent to the train  
5 station. It's where all your road improvements are  
6 happening. This is the property that when people  
7 come into Emerson, this is what they're going to  
8 see. This is the key element to your redevelopment  
9 plan, this is the key element to your Central  
10 Business District Plan, and all your master plan  
11 goals that have been going on since 1999.

12           Q.       And finally, directing your attention  
13 to Block 419, Lot 10, which can also be found on  
14 LUB-7, did you get a chance to make observations of  
15 Block 419, Lot 10?

16           A.       Yes, and this is the last one. This  
17 is an undersized site. There's really not too much  
18 to say about it, other than it's necessary for the  
19 redevelopment plan. It's, again, immediately  
20 adjacent to the train station. You can see that in  
21 the aerial. The fence that is located in the  
22 photograph on page 40, I believe is on the adjacent  
23 lot, but it's very difficult to tell.  
24 Unfortunately, all the parking for the site is  
25 located in the rear, and once you drive back there

1 again, it's all full, there's nothing you can do.  
2 There's nowhere to park to access any of the stores  
3 on he site. I'm not sure that the building is  
4 deteriorated. It doesn't seem to be as deteriorated  
5 as the rest of the buildings adjacent to it, but the  
6 site clearly exhibits faulty arrangement. Trying to  
7 get back to the parking area is very difficult, and,  
8 I believe, probably only utilized for employees.

9 Inefficient layout and given the size  
10 of the building, there's clearly a need for outdoor  
11 storage, and you'll see that as you look at the  
12 photographs in the rear. Again, this also meets  
13 Criteria E, for under utilization.6.5 or two is  
14 standard.

15 And I keep bringing everything back to  
16 Criteria D, faulty arrangement, improper site  
17 design, and that clearly leads to under utilization  
18 and the lack of economic efficiency in the downtown.  
19 I think that when this Board looks at this document  
20 as a whole, they need to view that in comparison to  
21 your master plan goals.

22 MAYOR LAMATINA: Paragraph one, the  
23 sentence says, lack of a curb cut --

24 A. I did it again.

25 MAYOR LAMATINA: Is not typical?

1           A.       Is not typical.

2           MR. MARTIN:   LUB-6 -- we didn't get a  
3   7; am I right?

4           MR. DOYLE:   LUB-6, my apologies.

5   BY MR DOYLE:

6           Q.       So you believe this satisfies, this  
7   specific property of Block 419, Lot 10 meets boats  
8   Criteria D and E?

9           A.       Yes.

10          Q.       Is there anything special about the  
11   location of this property with respect to the area  
12   in general that would indicate that it's necessary  
13   for the effective development of the area?

14          A.       Well, as I mentioned, it's immediately  
15   adjacent to the train station, so I think it's an  
16   important corner.  But it also may be important with  
17   regard to circulation.  Because it's immediately  
18   adjacent to the railroad right of way.  And the  
19   plan, apparently, calls for parking in the rear of  
20   the block, and if there's access to rear parking  
21   that might be -- so yes, both in location  
22   perspective and plan perspective, I think it's  
23   important.

24          Q.       I'd now like to direct your attention  
25   to the conclusion that you came to in your report.

1 You've gone through each of the lots in Block 419,  
2 and you've come to the conclusion that based on your  
3 professional opinion, within a reasonable degree of  
4 certainty, each and every one of these lots, for the  
5 reasons that you've articulated, meet the criteria  
6 to be designated as properties in the area in need  
7 of redevelopment; is that accurate?

8 A. Yes.

9 Q. And do you have an opinion with  
10 respect to the area in general, whether it meets the  
11 criteria under the Local Housing and Redevelopment  
12 Law?

13 A. If you'd just indulge me for two  
14 minutes, I'd like to just read to you some of my  
15 decision. I believe that the properties have a  
16 deleterious impact on the surrounding area and the  
17 properties as a whole. First of all, I believe the  
18 majority of faulty arrangement that is  
19 characteristic of Criteria D, which I went through  
20 in detail. Due to the size of the sites themselves,  
21 the size of the buildings themselves, the location  
22 of the buildings, the lack of parking, improper  
23 circulation which impacts not only pedestrian  
24 circulation, but also vehicle circulation, and it  
25 has a safety impact.

1                   There's a number of sites that have  
2 inefficient layout which create no opportunities for  
3 improvement. There's no way, if you look at the  
4 aerial, to improve these properties without doing  
5 redevelopment, without consolidating the properties.  
6 And that's important to note when you're looking at  
7 a redevelopment plan. You can't improve these  
8 properties singularly. You can't have them come in  
9 for a site plan application, and everything will be  
10 fixed. That's not what's going to happen here,  
11 because the majority of the properties are at  
12 capacity. They need to be done if they want to be  
13 improved. If the Borough wants to improve them,  
14 they need to be done through the redevelopment  
15 process. And the fact that they currently lack  
16 appropriate planning standards for circulation,  
17 pedestrian circulation, building design is important  
18 to note. So if any of that wants to be improved, it  
19 has to be done through the redevelopment proces.

20                   As I mentioned to you, a lot of them  
21 currently lack curbing along Kinderkamack Road,  
22 which creates safety issues. Unchanneled vehicles  
23 exiting and entering the site creating pedestrian  
24 hazards. So for all of those reasons, I believe the  
25 majority of the study area meet Criteria D. As I

1 mentioned to you, I think the majority of the study  
2 area meets Criteria E. As a whole, as I mentioned  
3 to you, if you're looking at the entire 34 acres,  
4 only 10 of the 82 properties meet the 2.0 standard.  
5 Only one of the properties in Block 419 meet that  
6 standard. If you look at the commercial properties  
7 within the Borough outside of the study area, they  
8 meet that standard. They're at 2.11. So there's --  
9 as I mentioned to you, there's clearly an issue  
10 here. And I believe it's related to the fact that  
11 there is poor design and arrangement in this area as  
12 a whole. And that has resulted in economic under  
13 utilization, which wouldn't be a terrible thing, but  
14 it's right in the middle of your downtown, right in  
15 your Central Business District where your master  
16 plan documents have focused on for years. So  
17 combined with the master plan goals, the  
18 underutilization, and the obsolete layout, all give  
19 rise to this Board looking at this as an area in  
20 need redevelopment. And I think you have an  
21 important area to consider as an area in need of  
22 redevelopment.

23 Q. As the Borough's planner, do you have  
24 a recommendation for the Land Use Board?

25 A. I believe that the Board should

1 recommend this area as an area in need of  
2 redevelopment, or a continued area in need of  
3 redevelopment. Because, remember, this was done in  
4 2006 and 2008. We're just reconfirming it here  
5 based on today's standards, and I think you should  
6 recommend it as a continued area in need of  
7 redevelopment to the Governing Body so that they can  
8 move forward with whatever plan is necessary.

9 MR. DOYLE: That's all we have,  
10 Mr. Chairman.

11 MR. SCHWINDER: I'm again going to  
12 read what I read earlier on in the meeting, which is  
13 what this Board is charged with. And then we will  
14 open it up for public comments. Let me read what  
15 we're charged with first.

16 This public hearing is to consider  
17 recommending to the Borough council whether or not  
18 certain blocks and lots located within the Central  
19 Business District meet the statutory criteria to be  
20 designated as a Condemnation Redevelopment Area  
21 pursuant to the New Jersey Local Redevelopment and  
22 Housing Law, and to hear all persons interested in  
23 or would be affected by said designation. And with  
24 that in mind, let me remind you that we have to be  
25 out of here by 11 o'clock.

1                   Our next order of business is public  
2 comment. Members of the public are welcome to speak  
3 on any topic by coming -- on this particular topic,  
4 the area that we discussed tonight, which is the  
5 area between Kinderkamack Road, Lincoln Boulevard,  
6 Linwood and the railroad tracks.

7                   Come up to the front of room, state  
8 your name and address for the record. In the  
9 interest of time, speakers are limited to five  
10 minutes, including questions and answers. In  
11 consideration of all who may wish to speak, please  
12 keep your comments brief and concise. May I have a  
13 motion to open the meeting to the general comments  
14 form the public?

15                   (Motion made and seconded.)

16                   MR. DOYLE: Might I suggest that,  
17 perhaps, in order of priority, although everybody  
18 should be given an opportunity to speak, but those  
19 property owners that are directly affected by this.  
20 In other words, those within Block 419, you give  
21 them priority since they came here tonight --

22                   MR. SCHWINDER: Absolutely.

23                   MR. DOYLE: And then anybody else, of  
24 course, can speak. Does that make sense?

25                   MR. SCHWINDER: That makes sense.

1 MR. MARTIN: Mr. Doyle, I think that  
2 makes sense. There's one other priority --

3 MR. DOYLE: Sure.

4 MR. MARTIN: Potentially, I see some  
5 dignitaries here. If they have objectors, maybe  
6 they should step forward first.

7 MR. DOYLE: I agree with that.

8 MR. JAWORSKI: Thank you, Mr. Martin.  
9 First I have to apologize to the Board for my  
10 informal appearance tonight. I did not intend to  
11 step up to the microphone, but I just have a couple  
12 of questions I'd like to ask Ms. Bogart.

13 For the record, my name is Jim  
14 Jaworski. I'm an attorney at law in State of New  
15 Jersey. I am here on behalf of 214 Kinderkamack,  
16 LLC, the owner of Block 419, Lot 4. And I really  
17 just had a few questions to supplement the record,  
18 if I could.

19 MS. BOGART: Sure.

20 MR. JAWORSKI: You talked about what  
21 you did in preparation for your testimony here this  
22 evening. You mentioned that you went to all of the  
23 sites, and you specifically talked to the issue of  
24 the Rancho restaurant. Did you have occasion to  
25 go inside and see the interior improvements that

1 were made to the restaurant?

2 MS. BOGART: Yes, I have.

3 MR. JAWORSKI: You did. And did you  
4 also see the exterior improvements that were made as  
5 well?

6 MS. BOGART: Yes.

7 MR. JAWORSKI: You talked about the  
8 taxes and the fact that the two to one ratio was met  
9 only by one property in the entire study area, that  
10 being this property?

11 MS. BOGART: Yes.

12 MR. JAWORSKI: And the standard you  
13 found around the town was about 2.11?

14 MS. BOGART: Yes.

15 MR. JAWORSKI: What was the standard  
16 you called off for this property in question?

17 MS. BOGART: 2.48.

18 MR. JAWORSKI: And the standard you  
19 mentioned around the town was 2.11?

20 MS. BOGART: Correct.

21 MR. JAWORSKI: Were you aware that  
22 there was an increase in the assessment for the  
23 improvements only in 2015 of about \$220,000?

24 MS. BOGART: No.

25 MR. JAWORSKI: Are you aware how long

1 the restaurant has been operating?

2 MS. BOGART: I know a couple of years.

3 MR. JAWORSKI: Couple years? You also  
4 put, I believe, four photographs of the site in  
5 question in your report. You spoke, however, about  
6 about the visual impact of this site as being one of  
7 the few most important, this one with respect to  
8 traffic proceeding southbound on Kinderkamack Road,  
9 I believe.

10 MS. BOGART: Correct.

11 MR. JAWORSKI: Correct me if I'm  
12 wrong, but isn't this building located at the back  
13 setback lines on both the front and the side yard  
14 line?

15 MS. BOGART: That has nothing to do  
16 with -- with regard to my comment with visual  
17 impact.

18 MR. JAWORSKI: I thought your comment  
19 was with respect to the empty parking lot that would  
20 be used by people driving southbound on  
21 Kinderkamack?

22 MS. BOGART: But also the under  
23 utilization. The plan calls for a multi-story mixed  
24 use building in this location.

25 MR. JAWORSKI: And you would see

1 exactly what as you're driving southbound on  
2 Kinderkamack?

3 MS. BOGART: With regard to the plan?

4 MR. JAWORSKI: With regard to the  
5 refinished exterior of the Rancho restaurant.

6 MS. BOGART: Currently?

7 MR. JAWORSKI: Currently.

8 MS. BOGART: A restaurant building  
9 with an empty parking lot behind.

10 MR. JAWORSKI: Okay. I believe you  
11 mentioned that the restaurant was a viable operation  
12 and important to the community. And did you look  
13 into how much the building permit fees were at the  
14 time that the restaurant was approved?

15 MS. BOGART: No, I did not.

16 MR. JAWORSKI: Thank you very much.

17 MR. DOYLE: Thank you.

18 MR. SCHWINDER: Would anyone else like  
19 to come up? State your name and address.

20 MS. AGNELLO: My name is Debbie  
21 Agnello, and my property is 188 Kinderkamack Road,  
22 and I have a few questions to ask. My building  
23 houses Cork and Keg and Ranch Cleaners.

24 MR. DOYLE: Can we identify the lot  
25 and block for the benefit of --

1 MS. AGNELLO: 419, 6.01.

2 MR. DOYLE: Thank you.

3 MS. AGNELLO: It's spent a long time  
4 memorizing that.

5 Was the redevelopment area that's  
6 referred to in the notice found already to be  
7 blighted?

8 MR. DOYLE: Yes.

9 MS. AGNELLO: So you're not going  
10 through the process now determine if the  
11 redevelopment area is blighted?

12 MR. DOYLE: We're reconfirming that  
13 the area continues to meet the blight standard under  
14 the Redevelopment Law.

15 MS. AGNELLO: So what has changed  
16 since that time?

17 MR. DOYLE: I'm not sure I understand  
18 the question.

19 MS. AGNELLO: Well, it was previously  
20 determined to be blighted, correct? So why are you  
21 reopening this right now? So what's changed since  
22 2004, 2003, since this started.

23 MR. DOYLE: It was my recommendation  
24 to both the Mayor and Council and to this Board that  
25 based on the age of this study, that if anybody were

1 to challenge the designation, because it was so old,  
2 a court might entertain sending us back to restudy  
3 it. So in excess of caution, we thought it only  
4 appropriate and fair to the property owners to  
5 restudy the area. Does that answer your question?

6 MS. AGNELLO: It is does. Thank you.

7 Has the municipality found that my  
8 property in the proposed redevelopment area is not  
9 productive?

10 MR. DOYLE: The municipality  
11 previously determined that your property met the  
12 criteria to be designated a property in need of  
13 redevelopment.

14 MS. AGNELLO: Is it unproductive? Is  
15 my property unproductive?

16 MR. DOYLE: Currently your property is  
17 under utilized, and I'll allow you to speak to that,  
18 unproductive in the sense that it's under utilized.

19 MS. BOGART: From a redevelopment  
20 prospective, unproductive is not a term -- under  
21 utilized is the term.

22 MS. AGNELLO: So it's under utilized  
23 because of the size of the property and what's  
24 there, even though we have parking spots on that  
25 property -- so that's under utilized by having

1 parking on the property? What makes my property  
2 under utilized?

3 MS. BOGART: I did not say that. What  
4 I did say, your site itself has a number of issues  
5 with regard to parking as you compare it to current  
6 standards, and the building is larger, which creates  
7 these issues with regard to the current standards  
8 for parking and circulation, so that's number one.  
9 So it doesn't meet current planning standards --

10 MS. AGNELLO: Current planning  
11 standards.

12 MS. BOGART: Correct.

13 MS. AGNELLO: So have you interviewed  
14 any of the business owners that are in the  
15 redevelopment plan on how productive their  
16 properties are? Have you interviewed any of the  
17 property owners at all? Have you gone to meet with  
18 them or talk with them about their properties?

19 MS. BOGART: Again, unproductive is  
20 not a term under Local Redevelopment Law --

21 MS. AGNELLO: Then maybe I need to  
22 rephrase that. Have you spoken to any of the  
23 property owners that are in redevelopment?

24 MS. BOGART: No.

25 MS. AGNELLO: None.

1 MS. BOGART: No, I'm sorry, I take  
2 that back, I've spoken to one.

3 MS. AGNELLO: Okay, just one.

4 And the buildings that are in this  
5 redevelopment, have they all paid their taxes?

6 MS. BOGART: That, I don't know.

7 MS. AGNELLO: The notice states that  
8 property owners have 45 days to challenge. Does  
9 this mean we have 45 days to challenge the  
10 determination of the area you have designated to be  
11 in need of redevelopment?

12 MR. DOYLE: Once the area is  
13 reconfirmed, you have 45 days from the time the  
14 Mayor and Council adopt that recommendation by the  
15 Land Use Board, assuming the Land Use Board accepts  
16 and adopts the recommendation of their planner.

17 MS. AGNELLO: That might be on  
18 December 20th Town Council meeting?

19 MR. DOYLE: I don't know whether we're  
20 going to reach that, but, yes, I would urge anybody  
21 here to carefully monitor what the -- first, of  
22 course, what this Land Use Board may or may not do  
23 with respect to this recommendation, and that  
24 assuming that they recommend that this area continue  
25 to be designated as an area in need of

1 redevelopment, I would recommend that you monitor  
2 what the Mayor and Council do, because if they adopt  
3 a resolution reconfirming this as an area in need of  
4 redevelopment, there would be a time frame, which is  
5 45 days under the law, from which you would need to  
6 challenge that reconfirmation.

7 MS. AGNELLO: So it's when they vote  
8 it. So it's 45 days from then, that's when the  
9 challenge period would start.

10 MR. DOYLE: Yes.

11 MS. AGNELLO: And have you considered  
12 the impact on the property owners by your having  
13 them under this threat of redevelopment for about 13  
14 or 14 years? Have you just considered the impact of  
15 maybe not being able to get tenants if the tenants  
16 moved out, or maybe thinking about selling their  
17 property with this redevelopment hanging over their  
18 head for all of these years? Who's going to finance  
19 that? What bank is going to come and say, oh, gee,  
20 they're in redevelopment. Who's going to finance  
21 this? So have you even considered the impact on  
22 the property owners? So is it your intent to push  
23 this area into being in need of redevelopment? Or,  
24 in other words, have purposely kept the property  
25 owners under the threat of redevelopment so that

1 there would be a disincentive over course of 13  
2 years for anyone to buy or even improve their  
3 property?

4 MR. DOYLE: So historically and  
5 factually, in 2004 the Governing Body determined  
6 that this area, including your property and those  
7 other properties in Block 419 met the criteria under  
8 Local Housing and Redevelopment Law to be designated  
9 an area of redevelopment.

10 MS. AGNELLO: 2004.

11 MR. DOYLE: In 2008 it was studied  
12 again --

13 MS. AGNELLO: Again.

14 MR. DOYLE: -- and this Land Use Board  
15 reconfirmed that, in fact, the area met the  
16 criteria. However, at that time the plan was  
17 amended, as Ms. Bogart testified, that allowed and  
18 incentivized the property owners to take it upon  
19 themselves to redevelop their own area. So without  
20 arguing with you, because that's not what I want to  
21 do, we encouraged the property owners to take it  
22 upon themselves to redevelop their own areas. And  
23 we gave them an incentive at that time by saying,  
24 you don't just have to have a liquor store or a  
25 Chinese restaurant. You can actually go up two to

1 three stories, you can have mixed use in the  
2 downtown area, and we encouraged that. After eight  
3 or nine years waiting as a result of that  
4 encouragement, no further redevelopment or  
5 improvements to the area had taken place. So now  
6 what our study shows is, not only has nothing  
7 happened since 2004, not only has nothing happened  
8 after we -- after the Governing Body provided an  
9 incentive for property owners to redevelop their  
10 areas, nothing has happened, and it continues to be  
11 blighted, and it continues to deteriorate. And the  
12 concern that we have not only for all of the  
13 taxpayers in Emerson, but the business people down  
14 there as well who want to continue to thrive, is  
15 that it continues to deteriorate, we're going to  
16 continue to have vacancies and further deterioration  
17 of downtown.

18 MS. AGNELLO: My building has not been  
19 vacant in 50 years. My building has always had  
20 tenants in that building, and it's a thriving  
21 business.

22 MR. DOYLE: And the concern that the  
23 Governing Body would have for you is that it always  
24 continues to be that way. And if the area isn't  
25 redeveloped, it's only a matter of time, based on

1 good planning experience and the expert testimony of  
2 our planner this evening, while that might have  
3 happened for the last 50 years, based on our  
4 knowledge -- the planner's knowledge about planning,  
5 that may not always be the case. And that's the  
6 reason why the Governing Body has recommended the  
7 Land Use Board go through this analysis, and that's  
8 why we're before the Land Use Board tonight to say,  
9 look, we want to make sure that you continue to  
10 thrive, and the businesses down there continue to  
11 thrive.

12 MS. AGNELLO: Thank you very much.

13 MR. SCHWINDER: Would anybody else  
14 like to make a statement or comment or question?

15 Yes, sir. State your name and  
16 address, please.

17 MR. VANDERKUEGEL: Ernest  
18 Vanderkuegel (ph), and I'm from Rockland County and  
19 New Jersey.

20 MR. MARTIN: And what's your address.

21 MR. VANDERKUEGEL: Rockland County,  
22 New York.

23 MR. MARTIN: I appreciate that.  
24 What's the street address? What town?

25 MR. VANDERKUEGEL: 32. I'm in

1 Congers, New York.

2 MR. MARTIN: 32 --

3 MR. VANDERKUEGEL: Rockland County,  
4 Congers, New York.

5 MR. MARTIN: No, no --

6 MR. VANDERKUEGEL: Are you an  
7 attorney.

8 MR. MARTIN: Yes.

9 MR. VANDERKUEGEL: Then that will  
10 suffice for you, sir.

11 MR. MARTIN: For the record, I just  
12 need the address for your commentary because we're  
13 making a record,

14 MR. VANDERKUEGEL: Yes. I'm from  
15 Rockland County, my name is Ernest  
16 Vanderkuegel (ph), and I'm in Congers, New York, and  
17 that will suffice.

18 MR. MARTIN: What address?

19 MR. VANDERKUEGEL: I just told you,  
20 Rockland County.

21 MR. MARTIN: What street address?

22 MR. VANDERKUEGEL: I'm not from this  
23 town. I don't have to give you my address.

24 MR. MARTIN: Okay. I'm going to  
25 submit to the Board that we not consider any weight

1 of this man's comments.

2 Go ahead.

3 MR. VANDERKUEGEL: I'm sorry, what did  
4 you say before go ahead.

5 MR. MARTIN: Continue.

6 MR. VANDERKUEGEL: As far as I know,  
7 there's three lawyers in this room right now, and  
8 they're going to need to have their State IDs. I am  
9 a federal officer and I own several businesses. And  
10 I have been retained by taxpayers here in this room  
11 who are also federal officers and bondholders to  
12 protect their rights.

13 So, yesterday, to your clerk, and I  
14 don't know if she's here, Ms. Jane was very helpful,  
15 and we faxed her the letter from the Department of  
16 Justice that each and every public officer in this  
17 town will be requested to read, initial each page,  
18 and return to our group, and that will be returned  
19 to the Department of Justice. And that, basically,  
20 says that this town may or may not be in compliance  
21 with their bonds. Every public officer here has to  
22 be oathed and bonded and have their State ID cards  
23 with them at all times, or they're not in this  
24 office. Lawyers have to be bonded as well, so I  
25 hope you're all covered. Here's why, sir. Under

1 USC Title 18 Section 241-242, whoever under any  
2 color of any law willfully subjects any person to  
3 the deprivation of any rights protected by the  
4 Constitution or laws of the United States shall be  
5 fined or imprisoned not more than one year, or both.

6           It has been brought to our attention,  
7 and that is the taxpayers, and the group is called  
8 OBOT, Oath and Bond Observation Team, and that's who  
9 we are, and what we're here to do. So what we're  
10 stating right away, immediately, is, these taxpayers  
11 are stakeholders. They run this town with their tax  
12 dollars, and we're looking to find out who  
13 instituted this project, because this project will  
14 not go through. What we're going to do is begin at  
15 the beginning and make sure that every public  
16 officer that is in their office lawfully and  
17 properly have their oath and their bonds in place,  
18 because you do not make decisions for the  
19 stakeholders. And that's under federal law, and we  
20 also have the town law, and that was faxed again  
21 yesterday to the very helpful Ms. Jane. We faxed  
22 her 14 pages. And in that, again, was the  
23 Department of Justice letter warning local and state  
24 courts that this type of behavior is not going to be  
25 tolerated, and that was also in the Bergen Record.

1 I believe it's the Bergen Record newspaper. And  
2 that went federal and it was also on television, and  
3 that was last May, so I hope you saw that. Because  
4 the very first paragraph of that letter stated, or  
5 the article stated, there were serious real life  
6 consequences for violation of public office. And we  
7 are here to find out which public officers are in  
8 violation, and who presented this project that would  
9 take advantage of these taxpayers' rights. And I'm  
10 heading up that group, and we have several other  
11 federal officers, and we reserve the right to bring  
12 federal authorities to this town and take care of  
13 the business for these taxpayers.

14 So I would just like to say to you, we  
15 will be back, and we request that information within  
16 30 days, that you all read that Department of  
17 Justice letter, that you sign and initial each page  
18 and return that back, we will be here to pick that  
19 up. We will be here at further meetings. We're  
20 simply here to make sure that the law is followed.

21 We are bond observers, and we seek  
22 bonds. That's what we do. Because that's what we  
23 put you in your office, Oath Bond Observation Team.  
24 That's what we do. Right now, we've been alerted  
25 that these taxpayers' rights have been violated, and

1 we're not going to stand for that. I appreciate  
2 your time, thank you very much. And please make  
3 sure all of your paperwork is in order, and you  
4 present that. You must prove compliance, and you  
5 must show proof of compliance upon demand, and this  
6 is that demand, and we request that be fulfilled.  
7 Thank you very much, and good night.

8 MR. MARTIN: Mr. Doyle, have you  
9 properly presented notice of these hearings to the  
10 Board?

11 MR. DOYLE: Yes.

12 MR. MARTIN: Thank you.

13 MR. SCHWINDER: Anybody else in the  
14 audience would like to make a statement or comment?  
15 Seeing no more hands -- yes.

16 MS. CORDERO: Good evening. My name  
17 is Rosella Cordero. I live at 11 Chestnut Street.  
18 My property is the one -- I think that it's in the  
19 border. It's not pertaining to the 419 section;  
20 however, it's in the development area. I would like  
21 to know what's the criteria, because my neighbor is  
22 not going to be included in the development area,  
23 and how long do I have -- I mean, how long do we  
24 have to make a decision if we sell the property,  
25 or not, or -- what are we to do?

1 MR. DOYLE: Can you give us a sense of  
2 where you are?

3 A. Yes.

4 MR. CORDERO: My name is Eduardo. I'm  
5 Rosella's husband. I believe we're referring to  
6 Section 3.02.

7 MR. DOYLE: .02?

8 MR. CORDERO: Yes.

9 MR. DOYLE: Do you have a copy of the  
10 notice?

11 MS. CORDERO: Not with me --

12 MR. DOYLE: But you got it in the  
13 mail?

14 MS. CORDERO: Yes.

15 MR. DOYLE: May I, Mr. Chairman?

16 MR. SCHWINDER: Yes, please. Bring  
17 the mic closer.

18 MR. DOYLE: No problem, sure. I was  
19 asked about -- what's your name again?

20 MS. CORDERO: Rosella.

21 MR. DOYLE: I was asked about Ms.  
22 Rosella's property. She's located at Block 214,  
23 and it appears to be Lot 3.02, or what she's  
24 identifying is 3.02. As I indicated at the  
25 beginning of the meeting, we, at this time, are not

1 providing any testimony or moving forward at this  
2 moment with the reconfirmation of your property. If  
3 we choose to do that in the future, you will receive  
4 similar notice in the mail, and we will publish it  
5 in the same way we're required as a matter of law.  
6 So right now, we're not asking this Land Use Board  
7 to take any action, any further action, with respect  
8 to your property. Whatever action may have been  
9 taken in the past, and I can tell you that your  
10 property was previously designated as property that  
11 met the criteria to be designated as an area in need  
12 of redevelopment, that continues to remain. That  
13 doesn't change. But we are not taking any further  
14 action with respect to your property, and if the  
15 Governing Body directs us to do that, you will get  
16 another notice to appear here before this Land Use  
17 Board again.

18 MS. CORDERO: I do understand, and  
19 that is great; that is fantastic. However, I have  
20 two little kids. I don't want to move out of  
21 Emerson. We bought the house three years ago. We  
22 bought from a lady that was there 40 years, I  
23 believe, it was a single-family house. I don't know  
24 what's the criteria of you to considering that or  
25 not, however, I need to know if I need to start

1 looking for another property or what am I going to  
2 do. It's not that simple. I know that it has been  
3 years that you have that in process, but at least  
4 we -- I mean, we're not a business. We're a family,  
5 a normal family that works, and we need, like, a  
6 time frame to make arrangements if the COAH is going  
7 to redevelop and we need to be relocated.

8 MR. DOYLE: I don't see that taking  
9 place, although I would be happy -- we didn't get a  
10 chance to see exactly what the property is, but I  
11 would be happy to take your information and work  
12 with our planner to figure out where that fits into  
13 the overall scheme, and then, not taking up the  
14 public's time, communicate with you where I believe  
15 this stands. I'm happy to do that. But, certainly,  
16 we're not taking it up tonight. It doesn't appear  
17 to be on my radar screen nor the planner's radar  
18 screen, so I'd be happy to investigate that and  
19 follow up for her.

20 MR. SCHWINDER: Will you give Mr.  
21 Doyle your name and address, and he will get back to  
22 you.

23 Is there anyone else?

24 MR. HOFFMAN: For the record, Kenneth  
25 Hoffman, 61 Emwood Drive. My question is for Ms.

1 Bogart. Approximately how many times have you done  
2 reports like this in order to determine criteria for  
3 an area in need of redevelopment?

4 MS. BOGART: Over my lifetime?

5 MR. HOFFMAN: Yes, approximately.

6 MS. BOGART: 20, maybe.

7 MR. HOFFMAN: Is there ever -- in any  
8 occasion where you have not recommended an  
9 area be -- have the criteria to be redeveloped?

10 MR. DOYLE: Actually, she did.  
11 Tonight she said that one of the buildings she  
12 didn't believe met the criteria. However, the land  
13 that is not part of the building may be necessary  
14 for site circulation for the effective redevelopment  
15 of the --

16 MR. HOFFMAN: Okay, Mr. Doyle, you  
17 didn't listen to my question. My question was, have  
18 you ever determined that any of the area, I did not  
19 say property, you understand what I'm saying, any of  
20 the areas in any of those cases did you ever  
21 determine that they did not meet the criteria?

22 MS. BOGART: I appreciate your comment  
23 and question. My job as a planner, I feel, is just  
24 to provide the Board and the Governing Body the  
25 tools so they can identify and determine what they

1 want to do. And typically, I'm usually brought in  
2 when it comes down to the eleventh hour, when  
3 they've had a master plan or a Central Business  
4 District plan that hasn't worked. It's like, now  
5 what do we do, can we do a redevelopment. And I go  
6 through an analysis and I say, this could meet this  
7 criteria, this could not, this could -- but the  
8 reality is, it's not my determination. It's the  
9 Governing Body; it's the Planning Board. And that's  
10 what's happened here throughout the last 15 years.  
11 It's the Governing Body and the Planning Board who  
12 have determined continually that not only does the  
13 area need improvement, but also needs redevelopment  
14 in order to improve. And my job as a planner, I  
15 feel, is just to provide them the information so  
16 that they can make that determination?

17 MR. HOFFMAN: So my impression is that  
18 in all the cases you were involved with, you've  
19 always met the desires of the people who've  
20 appointed you?

21 MR. BOGART: Well --

22 MR. HOFFMAN: Thank you. That's all.

23 MR. DOYLE: That's an unfair question.

24 MR. PETROW: Robert Petrow, 6  
25 Hawthorne Terrace, Saddle River. I have one

1 question. Are you bonded by the State to work on  
2 this project?

3 MR. DOYLE: I object.

4 MR. PETROW: Do you have a bond?

5 MR. DOYLE: I object.

6 MR. PETROW: On what basis, might I  
7 ask?

8 MR. DOYLE: It's not relevant to this  
9 procedure.

10 MR. PETROW: Why isn't it?  
11 I asked a simple question, are you  
12 bonded --

13 MR. DOYLE: It presupposes --

14 MR. PETROW: So in other words, she's  
15 not bonded. Is that what you're telling me?

16 MR. DOYLE: It presupposes --

17 MR. PETROW: She's not bonded --

18 MR. DOYLE: It presupposes --

19 MR. PETROW: It's a yes or no answer.

20 MR. DOYLE: It presupposes the  
21 validity of your question.

22 MR. MARTIN: Mr. Doyle, Ms. Bogart was  
23 qualified as an expert professional planner.

24 UNIDENTIFIED SPEAKER: But she's not  
25 bonded.

1 MR. MARTIN: Is that a requirement?

2 No.

3 MR. DOYLE: Thank you, Mr. Martin.

4 MR. PETROW: So is she or is she not  
5 bonded?

6 MR. MARTIN: She's a qualified  
7 professional planner with --

8 MR. PETROW: She's not bonded. Do you  
9 hear that folks?

10 MR. VANDERKUEGEL: Who's paying her.

11 MR. SCHWINDER: Any other questions or  
12 comments? We'll take one more comment after this,  
13 if there are any.

14 MS. McGUIRE: Jill McGuire, 154  
15 Linwood Ave. I'm just as an observer and a  
16 resident. I'm not involved in this area, but I did  
17 want to make note that I did notice that there was a  
18 discrepancy in the determination analysis today with  
19 Lot 5 in comparison to other areas in that zone, and  
20 I find that troubling as an observer.

21 MR. DOYLE: Hold on. Lot 5?

22 MS. McGUIRE: The one building that  
23 actually doesn't have any commercial retail  
24 residents, actually.

25 MS. BOGART: What was the discrepancy?

1 MS. MCGUIRE: I feel that it seems  
2 that you found fault with pretty much every lot in  
3 that zone with the exception of that Lot 5, except  
4 the --

5 MS. BOGART: Lot 5 was the one lot  
6 that was redeveloped in accordance with the  
7 development plan.

8 MS. MCGUIRE: It's vacant.

9 MS. BOGART: But it was redeveloped in  
10 accordance with the redevelopment plan.

11 MS. MCGUIRE: With the criteria that  
12 you gave, I just feel that it seems a little --  
13 there's a little bit of a discrepancy, in my opinion  
14 as an observer. I'm not an expert, I'm just making  
15 note as an observer.

16 MS. BOGART: Thank you.

17 MR. DOYLE: Thank you.

18 MR. BUETI: Ed Bueti, 91 Chestnut  
19 Street. I have an e-mail from a resident. Her name  
20 is Alicia Wallace at 198 Lincoln Boulevard, and she  
21 asked me to read this off of an e-mail. I don't  
22 have it printed out, so excuse me if I stumble  
23 through this.

24 "First, a special thank you to Mayor  
25 Lamatina and all of the municipal employees for all

1 their hard work and dedication. Everyone here has  
2 something in common, that they want what is best for  
3 their homes, their neighborhoods, their town. It is  
4 hard to imagine that there hasn't been more agreeing  
5 than disagreeing due to the fact that the people  
6 here truly love Emerson, me included.

7 "Most agree that we need the  
8 affordable housing, just as the courts have ordered.  
9 There's no dispute there. Is there a better place  
10 to put it? Does it have to be so big? Can it be  
11 broken into two or three projects so that all the  
12 apartments aren't so heavily concentrated in just  
13 one area? How is it beneficial to Emerson to have  
14 giant size buildings surrounded by small run-down  
15 buildings? What will an additional 2 to 300 cars do  
16 to the traffic? Even with the road improvements,  
17 will there be an additional 2 to 300 cars on the  
18 busiest corner of town? There is no white washing  
19 that fact. Many commercial property owners have  
20 strong ties to the area, and they feel alienated, as  
21 well as the residents whose voices go unheard. Is  
22 there a way to bridge the gap? Would Emerson have  
23 to build a four-story building if they had offered  
24 any type of incentives to current commercial  
25 property owners to add affordable housing? My

1 questions are more to provoke thought and  
2 conversation since I was not able to be there  
3 tonight.

4 "Facade improvement programs are  
5 incentive programs created to encourage property  
6 owners and businesses to promote the exterior  
7 appearance of their buildings and storefronts. They  
8 focus on either commercial or residential properties  
9 in historic and non-historic areas, and provide  
10 financial incentives, such as the matching of a  
11 grant or loan, a tax incentive and design  
12 assistance. In addition, the Township can opt to  
13 make necessary improvements mandatory by ordinance,  
14 giving the owners a set amount of years to complete  
15 the projects. In one of the an examples  
16 attached," -- and there's attachments with this, and  
17 she'll e-mail you this letter along with what she's  
18 proposing --

19 MR. MARTIN: Could you just have her  
20 direct it to the secretary, and then the secretary  
21 can --

22 MR. BUETI: Yeah, I will do that,  
23 okay. I lost my place here.

24 "These programs have been very  
25 successful in many other areas. Attached are two

1 examples currently being utilized. The third  
2 attachment is an example of an explanation of the  
3 benefits of the program. Any commercial property  
4 owner that does not want to partake in the mandatory  
5 improvement ordinance will most likely sell their  
6 property, and then the new owners will make the  
7 improvements using the Township's already  
8 established core designs. Perhaps some combination  
9 of your plan and a program like this would be a good  
10 compromise, leaving some semblance of a small,  
11 quaint town atmosphere that people have grown to  
12 love and depend on. Thank you for your time and  
13 consideration. I hope everybody has a good night."  
14 And it's signed Alicia Wallace, and that's it.

15 MR. SCHWINDER: Just a comment on that  
16 person's e-mail. Unfortunately, she was not here  
17 tonight. We've listened to the testimony of planner  
18 and our Borough redevelopment counsel, and when they  
19 discussed how long this project has been discussed  
20 and how only one property owner took advantage of  
21 redeveloping his property.

22 So it isn't that we haven't -- we  
23 haven't rushed into this, certainly, and this is a  
24 project that was started before the time of many on  
25 this Board, and before the current Mayor and

1 Council. So this is a project that I believe, if  
2 you listened to the Borough planner tonight, is  
3 something that was started in 1999, and it's been  
4 going on for 17 years. So we are in the process now  
5 just to reaffirm the designation of this 1.9 acres  
6 as an area in need of redevelopment based on current  
7 planning standards, and the recommendation of our  
8 Borough planner. And we would like to have the  
9 future of Emerson, downtown Emerson, be a thriving  
10 area, and one that meets the standards that is going  
11 to attract people to town, businesses to town, and  
12 customers to businesses. So that is my response,  
13 respectfully, to the person who wrote that e-mail,  
14 and I respect her opinion.

15 Does anybody else have a comment?

16 MR. VANDERKUEGEL: May I make one more  
17 comment, sir?

18 MR. SCHWINDER: This was the last  
19 comment, as I mentioned before. I said one more  
20 comment.

21 MR. VANDERKUEGEL: She does have to be  
22 bonded, sir, for the record --

23 MR. SCHWINDER: We have to be out of  
24 here by 11 o'clock, as I said.

25 MR. BUETI: Thank you for your answer.

1 It will be on public record so she can read it, and  
2 I appreciate you giving me the opportunity to read  
3 her letter, which I just read for the first time  
4 myself.

5 MR. SCHWINDER: I'll entertain a  
6 motion to close to the public.

7 UNIDENTIFIED SPEAKER: We have time.

8 UNIDENTIFIED SPEAKER: What are you  
9 afraid of?

10 MR. SCHWINDER: We have allowed  
11 numerous people to speak tonight, and we have to be  
12 out of here at 11 o'clock, and we have a little more  
13 business to conduct. So that's why I'm asking for a  
14 motion from the Board --

15 UNIDENTIFIED SPEAKER: We have 19  
16 minutes before the meeting ends.

17 (Board discussion.)

18 MR. MARTIN: There will be a  
19 two-minute --

20 MS. DiPAOLA: I have a quick question  
21 for Mr. Doyle.

22 MR. MARTIN: -- and everybody else,  
23 two minutes until ten minutes of, and then no more  
24 questions.

25 MS. DiPAOLA: Danielle DiPaola, 93

1 Union Street, Councilwoman, Borough of Emerson.

2 In light of all of all the work that  
3 was being done in the construction zone, I've been  
4 making a lot of phone calls to representatives,  
5 State representatives with the Lieutenant Governor's  
6 office. And I found out through speaking to the  
7 Office of Economic Development that the only way  
8 that you could give somebody a tax abatement is if  
9 their area is an area in the need of redevelopment.  
10 And when I found this out, I started thinking about  
11 all those development areas in town that were going  
12 to go through the process again -- so I just have a  
13 quick question. If this is designated as an area in  
14 need of redevelopment again, can we give these  
15 property owners a chance to build on their  
16 properties and give them incentives, like tax  
17 abatements in order for them to do it themselves,  
18 instead of bringing in -- instead of bringing in a  
19 redevelopment firm.

20 MR. MARTIN: That might be outside of  
21 her professional expertise as a planner, but --

22 MS. DiPAOLA: I was asking Mr. Doyle.

23 MR. MARTIN: Mr. Doyle is not  
24 testifying. But if you can help...

25 MR. DOYLE: Are you talking about

1 Block 419, or are you talking about --

2 MS. DiPAOLA: I'm talking about whole  
3 area in general, and especially 419 since that is on  
4 the chopping block right now.

5 MR. DOYLE: With respect to 419, no.  
6 As you know, the Governing Body has already entered  
7 into an agreement with a redeveloper to redevelop  
8 Block 419. So the answer with respect to 419 is no,  
9 that the Governing Body has already voted to allow a  
10 redeveloper to redevelop this area.

11 MS. DiPAOLA: Can I just ask you  
12 before I finish, then why is this back on the  
13 chopping block? Because I'm confused, as a  
14 Governing Body member, why this is going through  
15 again. Are we just dotting our I's and crossing our  
16 T's? We've already promised something to a  
17 redeveloper that we're not even sure as a Borough is  
18 actually permitted by law to be handed over to them  
19 by any eminent domain --

20 MR. DOYLE: It's absolutely permitted  
21 by law. We could absolutely move forward. We  
22 absolutely had the authority to enter into the  
23 agreement based on the 2004 designation. However,  
24 as I indicated at the outset of the meeting, we  
25 believe that there is the potential that because of

1 the age of the study it could be challenged, so it  
2 was in the interest of municipality to reconfirm  
3 that this area continues to meet the criteria under  
4 the Local Housing and Redevelopment Law as an area  
5 in need of redevelopment. The good news is, at  
6 least based on this planner's observations and  
7 professional opinions, this area continues to meet  
8 the requirements, 419, continues to meet the  
9 requirements to confirm the designation as an area  
10 in need of redevelopment.

11 With respect to the other lots and  
12 blocks that received notices but which there was no  
13 testimony or hearing this evening, nothing prevents  
14 those property owners tomorrow morning from moving  
15 forward with redeveloping their properties in  
16 accordance with the current zoning, which I believe  
17 is mixed use, residential, et cetera.

18 MS. DiPAOLA: Okay. And I just have a  
19 comment. So all this criteria is met based on the  
20 testimony of this planner. And you know me, you  
21 know I like to challenge things. So just like you  
22 have your legal opinion, another planner may have a  
23 different opinion than Ms. Bogart?

24 MR. DOYLE: Correct.

25 MR. SCHWINDER: I will entertain a

1 motion to close to the public.

2 UNIDENTIFIED SPEAKER: One more.

3 MR. O'BRIEN: Tim O'Brien, 118 Dyer  
4 Ave. You said this has been going on for a long  
5 time. You're going after the business to clean up  
6 and do whatever. What about the town or Borough  
7 street lights that have been knocked down for years,  
8 traffic cones put over them, not working. Lead by  
9 example, no?

10 MR. DOYLE: I don't know what  
11 specifically you're talking about --

12 MR. O'BRIEN: Oh, there's a few.

13 MR. DOYLE: What I can tell you,  
14 though, is what the Governing Body has done --  
15 noticed because of the improvements that you are  
16 living through right now, it is, I believe, the hope  
17 of the Mayor and Council, that as a result of the  
18 improvements to Kinderkermack Road, we're going to  
19 experience some improvement to the downtown area  
20 which is being funded in part by the County, and  
21 substantially in part by the redeveloper who's going  
22 to be redeveloping Block 419.

23 MR. O'BRIEN: So you're going to make  
24 everyone do everything first, and then the town can  
25 do their thing later?

1 MR. DOYLE: Well, the town is already  
2 stepping up -- I think I'm right about that, Mr.  
3 Mayor.

4 MAYOR LAMATINA: \$2.4 million project  
5 with the County of Bergen to redesign Kinderkamack  
6 Road, that's from Lincoln Boulevard, the Borough has  
7 also applied for a \$800,000 grant, transportation  
8 program to do the streetscape from Lincoln Boulevard  
9 North to the border of Westwood --

10 MR. O'BRIEN: Okay.

11 MAYOR LAMATINA: -- and south to the  
12 border of Oradell --

13 MR. DOYLE: Which includes, by the  
14 way, street lights, street lamps, pavers --

15 MR. O'BRIEN: Okay.

16 MAYOR LAMATINA: -- so we are trying.

17 MR. DOYLE: Thank you, Mr. O'Brien.

18 MR. SCHWINDER: Thank you.

19 MR. SANTANGELO: Good evening. My  
20 name is Mark Santangelo. I own 85 Kinderkermack  
21 Road. A comment for Mr. Doyle, or a question. You  
22 said that the present owners can, outside of 419,  
23 can take upon themselves to meet the redevelopment  
24 criteria.

25 MR. DOYLE: Yes.

1                   MR. SANTANGELO: What about those of  
2 us who have already put substantial dollars into our  
3 buildings since 2004 that came in front of this  
4 Board, came in front of the town, and our plans were  
5 approved, and we did rehab the buildings? Are we  
6 still at risk, or do we come out of the  
7 redevelopment area now? What happens to us?

8                   MR. MARTIN: I don't think Mr.  
9 Santangelo is in 419, or am I missing something --

10                  MR. SANTANGELO: No, I am not in 419.  
11 I made that clear --

12                  MR. DOYLE: -- the rest of the area --

13                  MR. SANTANGELO: Yeah. So that's my  
14 question --

15                  MR. DOYLE: And it's a really good  
16 question.

17                  MR. MARTIN: For 50 years I've driven  
18 by your building. I understand where you're  
19 located. I just want to make sure that that's not  
20 the subject of tonight's testimony. Is that  
21 correct?

22                  MS. BOGART: Correct.

23                  MR. DOYLE: If it's not, then it's a  
24 really good question. It's a really fair question.  
25 You have a right to that answer. The problem is,

1 because I don't know what's happened to your  
2 property and because I know that we -- we haven't  
3 studied it, I can't give you an opinion as to the  
4 case. I can tell you that, and this is purely  
5 anecdotal, for whatever it's worth, there was a  
6 property that was redeveloped in accordance with the  
7 local land use laws, mixed use, and you heard our  
8 planner tonight testify that she doesn't believe  
9 that the building any longer meets the criteria,  
10 however, we may need the lot, part of the lot, in  
11 order to effectively develop the balance of the  
12 redevelopment area. So to your point, and it's  
13 purely anecdotal, if buildings have been approved,  
14 there is the possibility that when and if we move to  
15 that area, Ms. Bogart may determine that your  
16 property and your building no longer meets the  
17 criteria to continue to be designated. But we  
18 haven't studied it yet. I don't want to give you  
19 false hope, but by the same token, I don't want you  
20 to lose sleep tonight. Because as you can see --

21 MR. SANTANGELO: I won't lose sleep,  
22 trust me. The point is, you made the comment that  
23 you have the ability to conform, and a lot of us  
24 that are in this room and that own buildings that  
25 are not in 419 have done that already.

1                   MR. MARTIN: I think a lot of your  
2 neighbors have done it.

3                   MR. SANTANGELO: Yes, yes, and the  
4 town never came back and said, you know what, you  
5 satisfied the criteria, and, Mr. Mayor, you were the  
6 mayor at the time, by the way, you should come out  
7 of the zone. The town never came to us --

8                   MAYOR LAMATINA: If you petition the  
9 town, the town can take you out of the zone. It's  
10 part of redevelopment law --

11                  MR. SANTANGELO: That's great, and I  
12 just want to know --

13                  MR. LAMATINA: We're trying to get  
14 done with 419 --

15                  MR. SANTANGELO: I know that. I'm  
16 trying to ask a general question because there's a  
17 lot of concern from us -- I mean, there's a lot of  
18 people here that own buildings that are not in 419.  
19 We're looking at the bigger picture, which is  
20 basically the whole downtown area, except for a few  
21 properties. That's why I'm asking that question.

22                  MS. BOGART: If I may, the adopted  
23 redevelopment plan allows for properties to be taken  
24 out of a redevelopment designation as long as they  
25 met the redevelopment criteria that was set forth.

1 MR. SANTANGELO: Right, but the  
2 criteria back in '04 and '08?

3 MS. BOGART: I believe, and I'm not  
4 got the Governing Body or the Land Use Board, but I  
5 believe that as part of this process, as long as the  
6 property has been redeveloped, that they'll be taken  
7 out. Because right now, between '04 and '08 and  
8 today, nobody has analyzed that, to take anybody out  
9 or put anybody in --

10 MR. SANTANGELO: Right, I just want to  
11 bring that to you --

12 MR. DOYLE: It's absolutely a fair  
13 comment, and we're going to get there.

14 MR. SANTANGELO: Great. I'm done.  
15 Thank you.

16 MR. DOYLE: Thank you, sir.

17 MR. SCHWINDER: I'd like to entertain  
18 a motion to close to the public.

19 (Motion made and seconded; all in  
20 favor.)

21 MR. SCHWINDER: We are now closed to  
22 the public.

23 There is one more item that we have to  
24 discuss.

25 (Discussion, 10:52 p.m. to 10:54 p.m.)

1 \* \* \*

2 MR. SCHWINDER: On December the 6th  
3 Mayor and Council determined that additional  
4 amendments were necessary, and introduced on first  
5 reading Ordinance Number 1535-16 proposing the  
6 Board's recommended amendments, along with two  
7 additional amendments to the Redevelopment Plan of  
8 the Central Business District. I would like to ask  
9 Ms. Bogart to please explain what those additional  
10 amendments are, explain it to the Board, as we are  
11 requested to comment to the Mayor and Council.

12 MS. BOGART: Sure. A couple of months  
13 ago there was discussion of some minor amendments to  
14 the Redevelopment Plan with regard to some changes  
15 in height and setback, and whatnot. And after the  
16 public hearing, this Board saw fit to recommend to  
17 the Governing Body the amendment to the  
18 Redevelopment Plan. Since then in December the  
19 Governing Body had a public hearing on it, and then  
20 introduced the ordinance last week, or so. There  
21 were two minor changes from when you saw it the  
22 first time, and so the Governing Body saw fit to  
23 have you just review it one more time and  
24 acknowledge those changes.

25 MR. SCHWINDER: And what are those

1 changes?

2 MS. BOGART: One of which was that,  
3 remember, we increased the height and allowed for a  
4 greater height towards the rear of the property  
5 along the railroad tracks, there was nothing in the  
6 ordinance that you saw that the height along the  
7 railroad tracks had to be set back from  
8 Kinderkermack Road. So the Governing Body said they  
9 wanted a minimum of five feet in setback, so those  
10 apartments that are located on the fourth story have  
11 a balcony that is a minimum of five feet so that you  
12 wouldn't see on Kinderkermack Road. So prior, that  
13 dimension was never set forth in the regulation.

14 MR. SCHWINDER: So the purpose of that  
15 amendment is so that the fourth story would not be  
16 visible from Kinderkermack Road, or it would be set  
17 back so it wouldn't be towering over the street.

18 MS. BOGART: That is correct. And it  
19 wouldn't be towering originally, but there was  
20 nothing in the ordinance that specifically gave it  
21 dimension. So now we have a dimension.

22 MR. SCHWINDER: So a five-foot  
23 setback, that's number one.

24 MS. BOGART: That's number one. The  
25 second one is with regard to parking. We had a

1 great discussion about parking requirements and the  
2 shared parking and hiring a traffic expert if the  
3 developer came in and wanted a parking reduction.  
4 The Governing Body decided that instead of possibly  
5 requiring the parking expert, they wanted to mandate  
6 that the Planning Board or the Land Use Board hire a  
7 traffic expert if any developer is seeking a  
8 reduction in the parking requirement. So that is  
9 now a mandate, that we now have to have our own  
10 traffic expert to review any shared parking  
11 reduction.

12 So there are two minor things, two  
13 things that I think help the regulations and help  
14 this Board as they go through the site planning  
15 process.

16 MR. MARTIN: And that would be at the  
17 expense of the developer?

18 MS. BOGART: Correct.

19 MR. DOYLE: You actually raised that  
20 with me earlier today, Mr. Martin, when I prepared  
21 you for this. If you wanted to include that, I  
22 don't believe that's substantive enough that we  
23 would need to have the Mayor and Council reintroduce  
24 that and send it back down to you, so we don't see  
25 any issue --

1 MR. MARTIN: It's just the ministerial  
2 act or the process.

3 MR. DOYLE: That's exactly right.

4 MR. SCHWINDER: Do any Board members  
5 have any comments or questions on this particular  
6 aspect?

7 Then I'd like to entertain a motion to  
8 open it to the public.

9 MR. MARTIN: Just as to the setback  
10 and any traffic studies, if needed.

11 (Motion made and seconded; all in favor.)

12 MR. SCHWINDER: Any comments on the  
13 two amendments that were introduced at the Mayor and  
14 Council meeting and brought to the Land Use Board?

15 Seeing no hands, then I'll entertain a  
16 motion to close to the public.

17 UNIDENTIFIED SPEAKER: I believe  
18 everybody is gone, and I believe that we did  
19 something wrong here. I'm the only one left here  
20 that's going to object to this fourth building?

21 MR. MARTIN: Well, it's a setback of  
22 five feet --

23 UNIDENTIFIED SPEAKER: I know what a  
24 setback is. It's not much. Five feet is this much.

25 MR. MARTIN: We're not talking about a

1 level; the issue is a setback.

2 UNIDENTIFIED SPEAKER: Well, I want to  
3 discuss the whole situation of this fourth floor.

4 MR. SCHWINDER: Step forward.

5 Give him the microphone.

6 State your name and address for the  
7 record, please.

8 UNIDENTIFIED SPEAKER: First of all,  
9 this thing should be done over again with public  
10 here. Everybody left. I don't think this was a  
11 good thing to do.

12 MR. SCHWINDER: I told the public we  
13 were not completed with the meeting, we had more  
14 business to --

15 UNIDENTIFIED SPEAKER: You were  
16 closing the public speaking, so everybody left. I'm  
17 the only one left here.

18 MR. SCHWINDER: We closed to the  
19 public on a subject, just as we --

20 UNIDENTIFIED SPEAKER: Is that on the  
21 agenda there, on that paper --

22 MR. DOYLE: Yes --

23 UNIDENTIFIED SPEAKER: About this  
24 fourth floor?

25 MR. MARTIN: No, no, the fourth floor

1 is not the issue; it's a setback, sir. A setback --

2 UNIDENTIFIED SPEAKER: What about the  
3 fourth floor?

4 MR. MARTIN: It was just testified to  
5 as to a setback of five feet for the fourth floor  
6 for a balcony area; is that correct?

7 MR. DOYLE: That's correct, Mr.  
8 Martin.

9 UNIDENTIFIED SPEAKER: At the last  
10 meeting that I went to, it was three floors. Now,  
11 all of a sudden, we're talking four floors.

12 MR. MARTIN: No, that's not accurate.

13 UNIDENTIFIED SPEAKER: It's not what?

14 MR. MARTIN: Ms. Bogart, it was four  
15 floors, and you're only testifying as to a setback;  
16 is that correct?

17 MS. BOGART: Correct.

18 UNIDENTIFIED SPEAKER: I heard  
19 somebody say fourth floor.

20 MR. MARTIN: That's nothing new.

21 MR. SCHWINDER: That was already  
22 approved.

23 MR. MARTIN: Exactly.

24 UNIDENTIFIED SPEAKER: When was that  
25 approved?

1 MS. BOGART: November, I believe.

2 MR. DOYLE: At the November meeting  
3 you made a recommendation to the Mayor and Council  
4 for four stories based on --

5 UNIDENTIFIED SPEAKER: Okay, but was  
6 it brought up to the public.

7 MR. MARTIN: Yes, it was.

8 MR. SCHWINDER: Yes, it was.

9 UNIDENTIFIED SPEAKER: Were there  
10 three people at the meeting? You know what's bad,  
11 it's like there's not -- we're not communicating  
12 with us people.

13 MR. DOYLE: The public was noticed, as  
14 required. Again, there was a presentation before  
15 the Mayor and Council, so it's been at least --

16 UNIDENTIFIED SPEAKER: How was the  
17 public notified? I don't go to every council  
18 meeting that there is, so I don't feel like we -- as  
19 we, as the people of Emerson, have a right to go  
20 through this.

21 MR. SCHWINDER: We don't have a vote  
22 on the amount of floors. We only recommended to the  
23 Mayor and Council --

24 UNIDENTIFIED SPEAKER: Okay, well,  
25 then we need to know --

1 MR. SCHWINDER: -- so that was -- we  
2 recommended, they took the recommendation, they  
3 accepted the recommendation, and they put it into --  
4 they finalized it into a resolution.

5 Tonight we are -- in the last meeting  
6 of the Mayor and Council they decided to bring forth  
7 two additional amendments to that particular  
8 ordinance. And the two additional amendments were  
9 for the fourth floor to be set back -- the fourth  
10 floor, which was already approved --

11 UNIDENTIFIED SPEAKER: We talked about  
12 four floor, but that was the back end of the  
13 building, not five feet from Kinderkermack Road.

14 MR. SCHWINDER: I'm sorry, it was the  
15 fourth floor on Kinderkermack Road. I'm sorry, sir,  
16 that's fourth floor on Kinderkermack Road.

17 UNIDENTIFIED SPEAKER: I even agreed  
18 with the Mayor. I said, you know, I could handle  
19 the fourth floor in the back because it's in the  
20 back. But when you go up four floors -- there was a  
21 lady at the Council meeting the other night, she was  
22 down in Clark, or somewhere down there where the  
23 building who's doing this, or may be going to do  
24 this, has a building there that's four stories, and  
25 she says it's a monster. It is a monster.

1 MR. MARTIN: I think you're saying the  
2 same thing. The fourth floor will be pushed back  
3 off the road, so --

4 UNIDENTIFIED SPEAKER: Not five feet,  
5 that's --

6 MR. MARTIN: I think it's a little  
7 confusing. If the front of the building is here and  
8 it goes up three floors, the fourth floor will have  
9 to be set back five feet from --

10 UNIDENTIFIED SPEAKER: I know what  
11 you're saying. I know what a setback is. I work in  
12 construction.

13 MR. MARTIN: -- five feet from the  
14 road, that's not true. It's five feet back from  
15 where the third floor ends.

16 UNIDENTIFIED SPEAKER: From where the  
17 third floor ends, how far back is that then?

18 MS. BOGART: It would be 17 feet.

19 MR. SCHWINDER: 17 feet from the road.

20 UNIDENTIFIED SPEAKER: No, I got what  
21 you're saying, but that's still not the way -- the  
22 last I heard, that's still not the way it was. It  
23 was four floors in the back building.

24 MR. SCHWINDER: We are not in a  
25 position to make any changes to what's already been

1 accepted as an ordinance. We are here tonight  
2 because we've been asked to approve two amendments  
3 to the master -- to the Redevelopment Plan, and what  
4 Ms. Bogart presented tonight is the five-foot  
5 setback, which the Mayor and Council had discussed,  
6 and also the ability of the town or the request to  
7 have the town hire a traffic study professional to  
8 review the plans of the applicant. That is what  
9 we've been asked to do. The fourth story has already  
10 been accepted. That was a month ago.

11 UNIDENTIFIED SPEAKER: I, myself,  
12 personally feel like I'm being hoodwinked, because  
13 as far -- I don't know how many people in Emerson  
14 know about this. I saw it in the paper, just the  
15 last week it came out in the paper, and that's the  
16 first I ever heard of it. Of course, I don't go to  
17 Council meetings, my bad, but the people of Emerson  
18 have to know about this.

19 MS. BOGART: This is the second  
20 hearing with the Land Use Board with regard to this  
21 ordinance, and we had two hearings already before  
22 the Governing Body, and we'll have a second reading  
23 for the Governing Body in a week or so.

24 MR. SCHWINDER: So, did you hear what  
25 Ms. Bogart --

1 UNIDENTIFIED SPEAKER: I hear that.

2 MR. SCHWINDER: Now, what we're doing  
3 is, we're recommending to the Mayor and Council that  
4 they approve these two amendments. And the Mayor  
5 and Council are the ones who vote on this. They  
6 only take our recommendations for or against.

7 UNIDENTIFIED SPEAKER: Well, here's my  
8 problem, too. I'm computer illiterate. I'll be 72  
9 so, I just can't handle computers. So I can't go  
10 on-line, I can't do this. I have a newspaper,  
11 which -- that's the way I was brought up as, can't  
12 change. But the people of Emerson have to know  
13 about this, and I don't think that there's a lot of  
14 people that know about it.

15 MR. SCHWINDER: Well, the Mayor and  
16 Council meetings are published. They're noticed in  
17 the paper, they appear on-line --

18 UNIDENTIFIED SPEAKER: I guess I have  
19 to do something like a letter to the editor, or  
20 something --

21 MR. SCHWINDER: I don't know if the  
22 editor is going to help you know when to come to  
23 meetings. If you know when the meetings are -- the  
24 meetings are scheduled regularly. They're on the  
25 bulletin board in front of the municipal building,

1 you'll always know the dates of our meetings. You  
2 don't need to be a computer expert --

3 UNIDENTIFIED SPEAKER: I don't want to  
4 have to sit through, you know, nothing. That's not  
5 my deal.

6 MR. SCHWINDER: I saw you attended the  
7 Mayor and Council meeting the other night, you spoke  
8 up, your voice was recognized and respected just as  
9 it is tonight. But in this particular case I'm  
10 going to have to say, you're a little bit wrong on  
11 this particular aspect, because the fourth floor is  
12 already approved.

13 UNIDENTIFIED SPEAKER: Let me ask you  
14 one thing. Why did we do this now, why after  
15 everybody left?

16 MR. SCHWINDER: I announced to the  
17 public that the first part of the meeting was over,  
18 please either sit down or be quiet, we are not  
19 finished with the meeting. At 10:30 I said we  
20 have --

21 UNIDENTIFIED SPEAKER: You didn't  
22 elaborate on what we were going to be talking about.  
23 I think people would have stayed.

24 MR. DOYLE: At the beginning of the  
25 meeting Mr. Schwinder read a script of the two

1 items, which included this. The beginning of the  
2 meeting, he read a script.

3 MR. SCHWINDER: This was announced.  
4 Right at the beginning of the meeting.

5 UNIDENTIFIED SPEAKER: It wasn't on  
6 the agenda, though.

7 MR. DOYLE: It was.

8 MAYOR LAMATINA: May I point out that  
9 this public comment is on the amendment to the  
10 ordinance, so I think we really need to focus -- do  
11 you disagree with the five-foot setback?

12 UNIDENTIFIED SPEAKER: Absolutely. I  
13 disagree with the fourth floor. I told you already,  
14 in the back I can handle it --

15 MAYOR LAMATINA: The answer is you do.  
16 Thank you.

17 UNIDENTIFIED SPEAKER: It's clean up  
18 in the front, but not the fourth floor.

19 Did you find that? Can I see that?

20 It's not on here. This is what I was  
21 looking at. It's not on here. Good night, folks.

22 (Discussion.)

23 MAYOR LAMATINA: I see it's not on the  
24 agenda, but at Mayor and Council if there's an item  
25 that wants to be added to the agenda, it can be

1 added the unanimous vote by the Board. Is that true  
2 for the Land Use Board?

3 MR. DOYLE: This is a standard -- you  
4 don't have to notice for this. It's just a referral  
5 from the Governing Body. It's not a public hearing;  
6 it's just a referral for your determination.

7 MAYOR LAMATINA: Can we add it -- do  
8 we need to add it to the agenda by a vote --

9 MR. DOYLE: In fact, I think it's very  
10 kind and generous that the Land Use Board chooses to  
11 open it to the public. This is purely a --

12 MR. MARTIN: The point of the matter  
13 is, the Governing Body makes a decision on this. So  
14 this is a referral. You have your chance to tell  
15 the Governing Body why you don't think the five-foot  
16 setback is appropriate. And that's the determining  
17 body --

18 MR. DOYLE: Mayor, the next meeting is  
19 the 20th, correct?

20 MAYOR LAMATINA: Correct.

21 MR. DOYLE: So I would like to  
22 announce for anybody that wants to be heard, there  
23 will be a full hearing on this amendment that was  
24 referred to the Land Use Board for its  
25 recommendation. There will be a full hearing on

1 December 20th beginning at 7:30 p.m. in the chambers  
2 of Mayor and Council.

3 MAYOR LAMATINA: Actually, the entire  
4 ordinance, not just this --

5 MR. DOYLE: That's actually correct,  
6 Mr. Mayor. That's right.

7 MAYOR LAMATINA: You can object to the  
8 fourth story, you can object to anything that's in  
9 the ordinance, that's Mayor and Council on December  
10 20th.

11 UNIDENTIFIED SPEAKER: Will you put  
12 that in the paper --

13 MR. DOYLE: Actually, it is noticed in  
14 the paper too, Mr. Mayor. It has to be advertised.

15 MR. MARTIN: On that ordinance.

16 MAYOR LAMATINA: I'm telling you  
17 tonight.

18 UNIDENTIFIED SPEAKER: Thank you.

19 MS. BOGART: As I mentioned, this  
20 Board already reviewed this ordinance. It just came  
21 back as a courtesy to review two minor issues. The  
22 reality is, this Board's only jurisdiction is to  
23 review the ordinance for consistency with the Master  
24 Plan and Redevelopment Plan, which you already  
25 determined that it was consistent, so -- it's not

1 supposed to be open to the public, this is a work go  
2 document for your recommendations back to the  
3 Governing Body.

4 MR. MARTIN: Your input is  
5 appreciated, and you can test that ordinance. You  
6 can go to the Governing Body. The Land Use Board  
7 has no binding effect on that.

8 MR. SCHWINDER: We can't answer your  
9 question.

10 UNIDENTIFIED SPEAKER: I just wish  
11 that everybody could have been here to hear that,  
12 that's all.

13 MR. SCHWINDER: Well, just tell your  
14 friends that December 20th it will be discussed at  
15 the Mayor and Council meeting.

16 MR. MARTIN: Which may be here.

17 MR. SCHWINDER: Thank you, sir.

18 MS. McGUIRE: Jill McGuire, 154  
19 Linwood Ave. I wasn't planning on speaking, but  
20 when he came up, I'm the girl that he was speaking  
21 about who went to Westfield and saw a four-story  
22 building that looked exactly like the JMF building  
23 in Westfield, it was all residential though, and it  
24 had a setback. And having seen it firsthand, I am  
25 against the five-foot setback. I would like it to

1 be more. It is not -- it doesn't soften the look as  
2 was suggested by JMF. Seeing it firsthand, in stark  
3 reality, standing in front of it in the Trader Joe's  
4 parking lot -- if you want to look it up and Google  
5 it, it really is there, it's the building, and I'm  
6 against it.

7                   And as far as for clarification, what  
8 happened on Tuesday was not approval of the  
9 amendment. It was a first read that was voted on.  
10 So just so you know, it wasn't approved, and there  
11 will be a second read and public hearing on the  
12 20th, which I'm aware of. And I'm sad that it  
13 wasn't on the agenda this evening. I'm not saying  
14 that everyone in the room was planning on listening  
15 to this topic, but possibly. And I'm concerned,  
16 very concerned, about this particular project, and  
17 further concerned with what was going on this  
18 evening with possibly how it will move forward and  
19 the way that it will move forward with the property  
20 owners. Like I hope that it's something that's,  
21 more -- that everyone is receptive and walks away  
22 with a smile on their face. And it makes me sad to  
23 see that these people, businesses that I participate  
24 in as a customer, Cork & Keg, Ranch Cleaners, the  
25 gelato place, these are all places -- Rancho, I

1 mean, that's a nice restaurant. I mean, I felt a  
2 little sad to hear you say that it's blighted. It's  
3 a good restaurant. The Nerds play there, fun stuff  
4 going on there.

5 MR. MARTIN: Just comments as to the  
6 five-foot setback --

7 MS. McGUIRE: Sorry. I'm against the  
8 five-foot setback.

9 MR. MARTIN: -- and the traffic  
10 consultant, and how that person is --

11 MS. McGUIRE: Right. Sorry.

12 MR. MARTIN: It's okay. You can  
13 contest that issue with the Governing Body. If the  
14 Board does nothing tonight, on the 20th they don't  
15 even have somebody recommending push it back --  
16 maybe I'm wrong, but I believe your consideration is  
17 push it back further or get rid of it. Those are  
18 two things for the Governing Body --

19 A. Well, right. I totally -- right. If  
20 it has to be, which I understand -- I mean, look, I  
21 get it. It's big decisions that are being made, so  
22 I'm not one of those people who stomps my feet or  
23 throws a temper tantrum if things don't go my way.  
24 I know that things go on that I'm not necessarily  
25 going to like sometimes, but if the four-story

1 exists I hope that the setback maybe is a little  
2 more, because it is really high.

3           And having seen it -- everyone else, I  
4 think, has seen the plan, where it's, like, well,  
5 this is conceptual. And all these times I've been  
6 going to the meetings and it's, like, conceptual  
7 drawings. And then it was, like, I went to go to  
8 dinner with my cousin last Saturday and I get out of  
9 my car and I walk and I'm, like, oh, my goodness,  
10 that's the building. And it was pretty interesting  
11 to see firsthand. And it's tall and it's big, and  
12 it's, you know, the setback isn't much of a setback.

13           MR. SCHWINDER: Ms. McGuire, I applaud  
14 the fact -- I saw you at the last Mayor and Council  
15 meeting, I've seen you at other meetings. I applaud  
16 the fact that you attend, that you participate, that  
17 you state your view, and I thank you for your view  
18 tonight. But I will, just in defense of this Board,  
19 I will read to you again what I read to a full  
20 house --

21           MS. MCGUIRE: Oh, no, I heard you --

22           MR. SCHWINDER: -- at the beginning of  
23 the meeting.

24           MS. MCGUIRE: I know.

25           MR. SCHWINDER: So we were up front

1 that this was going to be discussed. I notified the  
2 audience that we had more business to take care of  
3 tonight, and I tried to cut the public session at  
4 10:30. As it happened, we let it continue, and here  
5 it is at 11:15, and we were supposed to be out of  
6 here, according to the Board of Education, by 11.  
7 So I just wanted to make sure that you understood  
8 that we did cover this --

9 MS. McGUIRE: I understand. I'll be  
10 honest, I'm not even that savvy. The other night  
11 when they did the first read, I thought what  
12 everyone was voting on was pulling the reading.  
13 Because I figured when you read -- when an amendment  
14 is proposed, that they read what the amendment is.  
15 And so when nothing was read and everyone started  
16 voting, I thought they were pulling it from being  
17 read. And it wasn't until after someone said, you  
18 know, that already got voted on. And I was like,  
19 oh. So I think, you know, sometimes we residents  
20 are a little naive. But coming to these meetings,  
21 and you're all very savvy at this point, but I'm  
22 still getting my feet wet, so...

23 MR. SCHWINDER: Well, continue to do  
24 so.

25 MS. McGUIRE: I'm trying.

1 MR. SCHWINDER: And thank you for your  
2 comments.

3 MS. McGUIRE: Thanks. Have a good  
4 night, everyone.

5 MR. SCHWINDER: This is definitely the  
6 last. State your name, please, and address.

7 MR. SCALA: Dominic Scala, 188  
8 Kinderkermack Road.

9 MR. SCHWINDER: The topic is the  
10 five-foot setback and --

11 MR. SCALA: Since the meeting was cut  
12 sure and not everybody else was able to speak about  
13 the first section, will that continue on the very  
14 next meeting?

15 MR. SCHWINDER: No.

16 MR. MARTIN: It wasn't cut short; it  
17 was a full hearing on it.

18 MR. SCALA: People still wanted to  
19 come up, and you cut it short.

20 MR. MARTIN: Well, we cut it short  
21 because we had additional issues --

22 MR. SCALA: So it's not going to  
23 continue the next meeting; the first section is  
24 done?

25 MR. MARTIN: It's been fully done,

1 public comment was cited, and no one else raised  
2 their hand, and that was it, right?

3 MR. SCALA: No, that's not true.

4 MR. MARTIN: I'm sorry. Maybe I'm  
5 wrong. Did anybody else observe any other hands up?

6 MR. SCALA: You called the last  
7 person, but there were other people still waiting to  
8 come up. I got my answer. Thank you.

9 MR. SCHWINDER: I'll entertain a  
10 motion to close to the public.

11 (Motion made and seconded; all in favor.)

12 MR. SCHWINDER: So we have two things  
13 that we've been asked to do. The first thing we  
14 were asked to do by the Mayor and Council was to  
15 consider recommending to the Borough whether or not  
16 certain blocks and lots located in the Central  
17 Business District meet the statutory criteria to be  
18 designated as a Condemnation Redevelopment Area  
19 pursuant to the New Jersey Local Redevelopment and  
20 Housing Law. We have heard testimony from Ms.  
21 Bogart, we have heard comments from the public, and  
22 at this point in time I would like to entertain a  
23 motion if this Board will be recommending to the  
24 Borough counsel to accept the designated area as one  
25 that is in need of redevelopment in a Condemnation

1 Redevelopment Area. So I will accept a motion on  
2 that.

3 (Motion made.)

4 MR. SCHWINDER: We have a motion, and  
5 that's in favor of recommending the area in need of  
6 redevelopment.

7 MR. DOYLE: And that is only as to  
8 Block 419 and the lots identified. Block 419,  
9 Lots --

10 MS. BOGART: 1, 2, 3, 4, 5, 6.01,  
11 6.02, 7, 8, 9, and 10. No.

12 MR. SCHWINDER: Okay, that's on the  
13 record. Thank you. A second on that?

14 (Motion seconded.)

15 MR. SCHWINDER: Any discussion,  
16 further discussion tonight? Anyone?

17 Hearing no comments, then roll call --

18 MAYOR LAMATINA: I just have a  
19 question for Counsel. Do I vote, Mr. Doyle --

20 MR. MARTIN: You do not.

21 MAYOR LAMATINA: I do not vote. Thank  
22 you.

23 MR. MARTIN: I'm sorry, I should have  
24 brought that up earlier.

25 (Roll call; all in favor.)

1                   MR. MARTIN: Mr. Schwinder, I have a  
2 resolution. I did make a change of Lincoln Avenue,  
3 that was a mistyping there, and just put public  
4 streets, so that memorializes the --

5                   MR. DOYLE: Wherever Lincoln Avenue  
6 appears in there, Mr. Martin, we'd ask that it say  
7 public streets.

8                   MR. MARTIN: Yes. My error.

9                   MR. DOYLE: No, my error, but thank  
10 you.

11                  MR. SCHWINDER: The second piece of  
12 business we were asked or were directed by the Mayor  
13 an Council to review had to do with the amendments  
14 to the Redevelopment Plan, specifically the  
15 five-foot setback on the fourth floor of any  
16 building along Kinderkermack Road in the stated  
17 area. Once again, state the area for me.

18                  MS. BOGART: Block 419, Lots 1, 2, 3,  
19 4, 5, 6.01, 6.02, 7, 8, 9, and 10.

20                  MR. SCHWINDER: Thank you. So that's  
21 the five-foot setback for the fourth floor, and also  
22 the recommendation that the Borough engage a traffic  
23 specialist to analyze the proposal by the  
24 redeveloper as it pertains to parking and traffic  
25 flow.

1 MR. MARTIN: At the expense of the  
2 developer.

3 MR. SCHWINDER: At the expense of the  
4 developer. So I will entertain motion to make that  
5 recommendation to the Mayor and Council. So I'll  
6 await a motion.

7 (Motion made and seconded.)

8 MR. SCHWINDER: We have this motion on  
9 the floor. Do we have any further comment?

10 MR. KUTZIN: So we're recommending  
11 back to the Mayor and Council that the proposed  
12 ordinance change would go to the five-foot  
13 setback --

14 MR. SCHWINDER: For the fourth floor  
15 on buildings fronting Kinderkermack Road.

16 MR. MARTIN: Or tertiary streets --

17 MR. KUTZIN: Correct. My question is,  
18 after the discussion at the next Mayor and Council  
19 meeting could they potentially come back and make  
20 some further changes?

21 MR. MARTIN: They could reject the  
22 recommendation. It is simply a recommendation; it's  
23 not binding. Or they could adjust it, or adopt it.  
24 But it's a good question, and that's why it is a --  
25 it's a recommendation, and that's it.

1 MR. KUTZIN: And even if they accept  
2 the recommendation and pass the ordinance, the  
3 ultimate plan that builder follows through with  
4 could be something in excess of five feet?

5 MS. BOGART: No --

6 MR. MARTIN: They could also eliminate  
7 two floors and make it a two-story structure. The  
8 Governing Body has a lot of power in this regard.  
9 The Land Use Board just wants to make sure this  
10 particular finite addressing of the proposed  
11 ordinance, because it's up for vote on the 20th, is  
12 consistent with the Master Plan, which is what our  
13 domain is.

14 MS. BOGART: Additionally, the  
15 Redevelopment Plan requires that the Governing Body  
16 amend the plan. The developer is not allowed to  
17 come in for a variance. So you'll never see a site  
18 plan for this block where they waiver from any of  
19 the regulations.

20 MAYOR LAMATINA: Can't it be greater  
21 than five feet? Isn't the language not to be less  
22 than five-foot setback?

23 MR. DOYLE: Minimum, minimum.

24 MR. KUTZIN: So the final plans could  
25 be 7 feet or 10 feet?

1 MS. BOGART: Correct, and --

2 MAYOR LAMATINA: Not the final plan,  
3 it's the final ordinance adopted by the Borough on  
4 the 20th.

5 MR. SCHWINDER: It says requiring a  
6 minimum five-foot setback.

7 MAYOR LAMATINA: So if the Mayor and  
8 Council so chose, it can make the ordinance no less  
9 than seven feet --

10 MR. MARTIN: And the builder can  
11 choose to build 10 feet --

12 MR. SCHWINDER: And just for  
13 clarification, Ms. Bogart and Mr. Doyle, on this  
14 particular aspect I think several things, maybe I  
15 misspoke, but correct me if I'm wrong, the way this  
16 will read is, requiring a minimum five-foot in depth  
17 setback on the front facade of the fourth floor of  
18 buildings facing public streets. That's the  
19 amendment.

20 MR. DOYLE: Yes.

21 MS. BOGART: Yes.

22 MR. SCHWINDER: Because I think  
23 misspoke before --

24 MR. ADAMS: I have a question on that.  
25 If somebody votes no on that, does that mean that

1 they're saying you can have zero setback or that we  
2 don't want a fourth floor?

3 MR. MARTIN: At this time the  
4 recommendation would be not to do anything that's  
5 already currently pending before the Governing Body.

6 MR. SCHWINDER: Did you hear what Mr.  
7 Martin said?

8 MR. ADAMS: I didn't understand it.  
9 I know what he said, but I didn't understand it.

10 MR. MARTIN: Right now, there's an  
11 ordinance that going to be pending and will be  
12 decided probably on the 20th of December. If the  
13 Land Use Board rejects this proposed amendment to  
14 the ordinance as a recommendation to them, at this  
15 point it wouldn't be a five-foot setback of the  
16 fourth floor.

17 MR. ADAMS: It would be a zero-foot  
18 setback.

19 MR. MARTIN: Of the fourth floor,  
20 that's correct.

21 MR. SCHWINDER: That's the worst case  
22 scenario.

23 MR. MARTIN: If this Board doesn't  
24 recommend anything, they can do whatever they want,  
25 again, they can make it whatever they want. But if

1 pushing it back off so it's not right on top of a  
2 street in Emerson is something that this Board  
3 thinks is appropriate, the Board can recommend it by  
4 a positive referral. If there's some rejection and  
5 the Board doesn't recommend it, there's no setback  
6 of the fourth floor, right now it's pending, it's  
7 equal to the third and second and first floor --

8 MR. ADAMS: I guess my question is, I  
9 object to zero, I object to five. How do I vote?  
10 I'd like to see a ten-foot setback or a 20-foot  
11 setback. How do I vote? If I say no, that means  
12 I'm saying zero. If I say yes --

13 MR. MARTIN: It's a good point, and  
14 your job now is to enter into a discussion period  
15 and discuss with the Board members.

16 MR. ADAMS: I'm objecting to  
17 five-foot, so either way, I lose.

18 MAYOR LAMATINA: Well, you don't lose.  
19 You want to state what your vote is. The problem,  
20 with Mayor and Council, we talked -- the developer  
21 came in and talked to us about it and said anything  
22 more makes the apartments too small. So 20 feet,  
23 obviously, would eliminate -- so maybe five, seven  
24 feet, maybe ten feet. And again, as Counsel said,  
25 that's the Mayor and Council's problem. We can do

1 what we want. We need to ask for a referral, so  
2 this Board then says to Mayor and Council, we agree  
3 that a five-foot minimum setback --

4 MR. ADAMS: I personally --

5 MAYOR LAMATINA: -- it could be seven  
6 feet or ten feet.

7 MR. ADAMS: I personally feel that if  
8 I vote no, I'm saying it's okay to go to zero, but  
9 if they say yes, then it's saying I can go to five  
10 foot, and I object to both. So I'm not sure how to  
11 vote --

12 MR. MARTIN: Well, I don't think  
13 you -- you can say you want more --

14 MR. KUTZIN: We can vote it down and  
15 make a new motion, whatever you want --

16 MAYOR LAMATINA: You can set the  
17 motion --

18 MR. ADAMS: But without seeing  
19 drawings and understanding all of the mechanical  
20 aspects of it, I'm not prepared to say five, six,  
21 seven, or ten.

22 MR. SCHWINDER: Here's another thing  
23 you could do. You could vote either way, or  
24 abstain, which is not good, and if this Board  
25 decides that five feet is proposed, then I would

1 advise you to show up at the next Mayor and Council  
2 meeting and make your voice heard so that the Mayor  
3 and Council can consider something other than a  
4 minimum of five feet.

5 MR. ADAMS: I want to participate in  
6 tonight's meeting but I'm not sure how to vote  
7 to get my point across.

8 MR. SCHWINDER: Well, I think you've  
9 made your point.

10 MR. ADAMS: I made it verbally, but I  
11 still don't know how to vote.

12 MR. MARTIN: You can vote no because  
13 you think it should be greater and you want to  
14 petition for greater or at least try to get the  
15 Board members to agree with you.

16 MR. SCHWINDER: I think it would be a  
17 mistake to vote no and not show up at the Mayor and  
18 Council meeting.

19 MR. ADAMS: Point well taken.

20 MR. SUDANO: How about if the Board  
21 recommended that you reach a setback that's  
22 comfortable for both the developer and the Mayor and  
23 Council and this Board, above five, if possible?

24 MAYOR LAMATINA: I can tell you, we  
25 did discuss in Mayor and Council, and not -- but

1 before that we brought the planner in, we brought  
2 the developer in, we had and an extensive discussion  
3 with Mayor and Council. And again, there was some  
4 resistance to five feet, and Mayor and Council, we  
5 think five feet is correct -- now, you can say  
6 whatever you want, but I think if you say seven  
7 feet, I think there's going to be an issue with  
8 Mayor and Council. So that's -- you can do whatever  
9 you want.

10 Am I voting on this?

11 MR. MARTIN: No --

12 MR. DOYLE: So you know, whatever you  
13 recommend, you recommend. The Governing Body will  
14 take into consideration, as it always does, this  
15 Land Use Board's recommendation. But it does have  
16 the ability to be able to adopt the resolution over  
17 your recommendation, as long as it articulates the  
18 reasons why it's doing that. For example, you could  
19 say seven feet would be better, and the Governing  
20 Body, if they so choose, could say, we understand  
21 why the Land Use Board would want seven, seven might  
22 be better, having heard from the applicant, having  
23 heard from JMF, that when it does that it will  
24 reduce the size of the unit from 800 square feet for  
25 a studio to 500 hundred square feet for a studio

1 which makes it not rentable, we're going to adopt an  
2 ordinance with a five-foot setback, notwithstanding  
3 the recommendations of the Land Use Board.

4           So you will not be crippling the Mayor  
5 and Council. To your point, you haven't heard a lot  
6 of that, but the Mayor and Council did hear that,  
7 really going much more than that, reducing the size  
8 of the unit, which they would argue -- they would  
9 argue, and I'm not suggesting they're right,  
10 unmarketable.

11           MR. SUDANO: Are those numbers  
12 accurate? Or are you just throwing out 500 and 700  
13 square feet --

14           MS. BOGART: He was just throwing it  
15 out, because the studios are like 500 now, so they  
16 would be much lower.

17           MAYOR LAMATINA: And the planner, I  
18 think, has a position, correct, Ms. Bogart, you have  
19 a thought on the five-foot setback?

20           MS. BOGART: Well, we talked a little  
21 bit about the marketability of the units because a  
22 lot of the studios are up top, and they are, right  
23 now, 500 square feet, which is minimal. And then at  
24 the Mayor and Council we talked about maintaining a  
25 balcony that was actually usable, because the

1 original concept had three foot balconies, some  
2 areas, you can't even put a chair out there. So  
3 that's why the Mayor and Council said, we want a  
4 minimum of five feet to make sure that it's actually  
5 a usable balcony.

6 MR. SCHWINDER: Mr. Adams, perhaps,  
7 however you vote tonight and you show up at the  
8 Mayor and Council meeting, maybe there is some  
9 further discussion that can be held with the  
10 developer at the recommendation of the Mayor and  
11 Council that has something to do with the roof line.  
12 So maybe the roof line can be somewhat controlled so  
13 that at five feet it won't be as visible with a  
14 higher incline versus something less low.

15 So these are all things that you can  
16 suggest to the Mayor and Council be investigated.  
17 I'm sure that is not something that has been  
18 discussed, but if that's going to help you with the  
19 way you feel this building is going to look over  
20 Kinderkermack Road, then I suggest that you show up  
21 at the Mayor and Council meeting and give  
22 your opinion there and make your suggestions there,  
23 and possibly those suggestions will be discussed,  
24 and may be discussed in advance. Now that Mayor has  
25 heard your comment, if there's a discussion that the

1 Mayor has or a Council member has with JMF, maybe  
2 this can be discussed one more time based  
3 on comments made at the Land Use Board meeting.

4 MAYOR LAMATINA: Mr. Adams can make a  
5 motion to recommend a seven foot or more setback --

6 MR. ADAMS: Well, without seeing the  
7 drawings and some architectural design, I don't know  
8 how effective the five-foot would be to not be able  
9 to see the fourth story, which is the intent, versus  
10 the seven-foot. And I don't know how high it is  
11 above, because if it's three feet high, you won't  
12 see it. But if it's four feet high, you will see  
13 it. So without having those drawings in front of  
14 me, I really can't make that --

15 MS. BOGART: Mr. Chairman, I have a  
16 suggestion.

17 MR. SCHWINDER: Yes, Ms. Bogart.

18 MS. BOGART: I don't have the details  
19 of the floor plan, but maybe there's an opportunity,  
20 as the Mayor and you were suggesting, is that maybe  
21 80 percent of the units are set back five feet, and  
22 the remainder is set back seven or eight feet,  
23 depending on the floor plan. So there may be some  
24 wiggle room that Mayor and Council could look at,  
25 depending on the floor plan.

1                   MR. SCHWINDER: So I think this is an  
2 issue that the Mayor should take into account and  
3 have some further discussion, and what the planner  
4 has said, because we're going to make a vote tonight  
5 that the Mayor and Council can accept or throw out.  
6 And what I hope, as a result of this meeting, that  
7 the Mayor digests what has been said tonight and  
8 tries to act on it.

9                   MAYOR LAMATINA: Thank you. I fully  
10 understand --

11                   MS. BOGART: I think that --

12                   MAYOR LAMATINA: I would urge a  
13 motion.

14                   (Motion made and seconded.)

15                   MR. SCHWINDER: Any other comments?

16                   Then I'd like to have a roll call vote  
17 on recommending this to the Mayor and Council as  
18 proposed by the planner, as -- as directed to us by  
19 the Mayor and Council in the last meeting. Roll  
20 call, please.

21                   (Mr. Adams abstained; all others in  
22 favor.)

23                   MR. SCHWINDER: That concludes our  
24 business end. The traffic study was part of that.  
25 That was all part of it.

1                   Did you want to be heard, Mr. Doyle?

2                   MR. DOYLE: No. I'll get you the  
3 revised language, and all that.

4                   MR. SCHWINDER: Everybody should have  
5 received proposed dates for next year's meeting.  
6 They've been shifted around a little bit, so it's  
7 not always a first and a third Thursday. So please,  
8 there have been some mitigating circumstances, so  
9 please look it over. If you have any objection,  
10 please get back to us as quickly as possible. I'd  
11 like to have your answers back within the next week,  
12 and if I don't hear back from anybody -- it's been  
13 sent to everybody by e-mail. If I don't hear back,  
14 we're going to send it to Jane Dietsche at the  
15 Borough Hall, and Ms. Jane, she's going to  
16 memorialize that, pending conflicts.

17                   Other than that, does anybody else  
18 have anything to say? If not, I'll entertain a  
19 motion to adjourn.

20                   (Motion made and seconded; all in favor.)

21                   MR. SCHWINDER: We are adjourned at  
22 11:35. Thank you all.

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C E R T I F I C A T E

I, TRINA B. OTHA, a Notary Public and  
Certified Court Reporter, do hereby certify that the  
foregoing is a true and accurate transcript of the  
proceedings as taken stenographically by and before  
me at the time, place and on the date hereinbefore  
set forth.

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Trina B. Otha, CCR  
Notary Public

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